

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That existing Chapter 311, "City of Cincinnati Income Tax," of the Cincinnati Municipal Code is hereby repealed effective as of **January 1, 2016**.

Section 2. That the following Chapter 311, "City of Cincinnati Income Tax," of the Cincinnati Municipal Code is hereby ordained effective as of **January 1, 2016**.

## **Chapter 311 – CITY OF CINCINNATI INCOME TAX**

### **Section 311-1. – Authority to Levy Tax; Effective Periods.**

- (a) The tax on income and the withholding tax established by this Chapter 311 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this chapter are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of Ohio

Revised Code Chapter 718. This chapter is deemed to incorporate the provisions of Ohio Revised Code Chapter 718, with permitted elections as provided herein.

- (b) The tax is an annual tax levied on the municipal taxable income of every person residing in or earning or receiving income in the City of Cincinnati. The City of Cincinnati shall tax income at a uniform rate as provided in Section 311-3 of this chapter.
- (c) The tax imposed by Section 311-3(a) of this chapter shall be levied, collected and paid with respect to all taxable income that is subject to the tax and that is earned or received on or after April 1, 1973.
- (d) The tax imposed by Section 311-3(b) of this chapter shall be levied, collected and paid with respect to all taxable income that is subject to the tax and that is earned or received after July 1, 1988, except as provided in Section 311-5 of this chapter.

### **Section 311-3. – Purposes; Imposition of Tax; Tax Rates.**

- (a) To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City of Cincinnati, including the pledging and payment of tax revenues for the principal and interest on bonds and notes issued to finance permanent improvements, and to provide public transit purposes generally and without limitation and including both capital and current operating expenses, there shall be, and is hereby, levied an annual tax, at the rate of two percent (2%) per annum upon municipal taxable income as defined in Section 311-9-M2 of this chapter, subject to the provisions of Section 311-107 of this chapter. For tax years beginning prior to January 1, 2016, the tax imposed by this section on the net profits

of an electric company, combined company or telephone company shall be subject to, and shall accord with, Ohio Revised Code Chapter 5745.

- (b) To provide funds for current operating expenses and permanent improvement purposes, including both direct and indirect cost (including the pledging and payment of tax revenues for the principal and interest on bonds and notes to finance permanent improvements) related to the construction, operation, equipment, maintenance and repair of the infrastructure of the city, including, but not limited to, streets, roads, thoroughfares, avenues, expressways, parkways, sidewalks, plazas, parks, recreation areas, grounds, ways, bridges, viaducts, tunnels, walls, structures, buildings, fixtures, traffic signals, street lighting and marking, landscaping, signage, telecommunications and information systems, there shall be, and is hereby levied on and after July 1, 1988, an annual tax at the rate of one-tenth of one percent (0.1%) per annum, in addition to any other tax imposed by Chapter 311 pursuant to authority granted in the charter of the city, and subject to provisions of Section 311-5 and 311-107 herein, upon those categories of income specified in Section 311-9-M2, as amended.

**Section 311-5. – Effective Period of Infrastructure Levy.**

- (a) The tax imposed by Section 311-3(b) of this chapter shall terminate and shall not be levied on or after July 1 of any year subsequent to 1992 in which the Municipality's Annual Financial Reports show that:
  - (i) For any calendar year subsequent to 1989 less than ninety percent (90%) of the lesser of:
    - (1) The base amount for such year; or
    - (2) The amount appropriated in such year for infrastructure purposes specified in Section 311-3(b) from all city funds except Metropolitan Sewer District Fund No. 701, Water Works Fund No. 101, Parking Systems Facilities Fund No. 102, Riverfront Stadium Fund No. 106, Stormwater Management Fund No. 107, Convention-Exposition Center Fund No. 103, and Lunken Airport Fund No. 104 (which seven (7) funds may be jointly referred to herein as the "Enumerated Funds") was expended for such infrastructure purposes by the end of the second (2<sup>nd</sup>) calendar year following the subject calendar year;
  - (ii) In 1990, 1991, 1992, 1993 and 1994 the amount appropriated in any calendar year for infrastructure purposes in Section 311-3(b) from all city funds except the Enumerated Funds was less than the base amount for such calendar year; or
  - (iii) In any calendar year subsequent to 1994 both of the following conditions occur:

- (1) In such calendar year the total amount appropriated for infrastructure purposes specified in Section 311-3(b) from all Municipal funds except the Enumerated Funds was less than the base amount for such calendar year; and
  - (2) In such year and the two (2) preceding calendar years the total amount appropriated for infrastructure purposes specified in Section 311-3(b) from all Municipal funds except the Enumerated Funds was less than an amount which is the result of multiplying the total amount of all appropriations in such three-year period for any purposes from all city funds except the Enumerated Funds times the 1994 Ratio. The "1994 Ratio" as used herein means the ratio of the base amount for 1994 to the amount of all appropriations in 1994 for any purposes from all Municipal funds except the Enumerated Funds.
- (b) As used in this section, the "base amount" shall be determined by application of the Annual Calculation set forth in Section 311-5(b)(i) or as otherwise specifically stated below:
- (i) Annual Calculation: The base amount for each year shall be the lesser of the following two calculated amounts:
    - (1) The base amount for the previous year adjusted upward or downward by an amount obtained by multiplying such previous year's base amount by the percentage change in the Implicit Price Deflator for Gross Domestic Product in the second (2<sup>nd</sup>) calendar year preceding the calendar year for which the base amount is being calculated, as compared with the third (3<sup>rd</sup>) calendar year preceding such year (for example, in calculating the base amount for 1991, the multiplier shall be the percentage change from 1988 to 1989); or
    - (2) The base amount for the previous year adjusted upward or downward by an amount obtained by multiplying such previous year's base amount by the preceding change in the General Fund revenues of the Municipality in the second (2<sup>nd</sup>) calendar year preceding the year for which the base amount is being calculated, as compared with the third (3<sup>rd</sup>) calendar year preceding such year.
- The Implicit Price Deflator for Gross Domestic Product is determined by the U.S. Department of Commerce, Bureau of Economic Analysis and is reported in the publication ECONOMIC INDICATORS prepared for the Joint Economic Committee by the Council of Economic Advisors.
- (ii) For the year 1990, the base amount shall be \$42 million.
  - (iii) For the years 1991, 1992 and 1993 the base amount shall be calculated as set forth in the Annual Calculation specified in Section 311-5(b)(i).

(iv) For the year 1994, the base amount shall be calculated as follows: The base amount for 1987 shall be \$42 million. Solely for the purposes of determining the base amount for 1994, a recalculated base amount shall be calculated for 1988, 1989, 1990, 1991, 1992, and 1993 by applying the Annual Calculation specified in Section 311-5(b)(i) above to the recalculated base amounts commencing with the 1987 base amount. For the year 1994 the base amount shall be determined by applying the Annual Calculation specified in Section 311-5(b)(i) above to the base amount for the previous year.

(v) For the year 1995 and thereafter, the base amount for each year shall be determined by applying the Annual Calculation specified in Section 311-5(b)(i) above to the base amount for the previous year.

#### **Section 311-7. - Allocation of Funds.**

(a) The revenues collected under the provisions of Section 311-3(a) shall be deposited in the "Undistributed Income Tax Fund" and thereafter the revenue from the first 1.7 percent (1.7%) municipal income tax rate imposed under Section 311-3(a) shall be allocated to the Undistributed Income Tax Fund, and the revenues from the remaining three-tenths of 1 percent (0.3%) municipal income tax rate imposed under Section 311-3(a) shall be allocated to the Income Tax—Transit Fund. Each year council shall appropriate from said funds the amount of money it determines necessary for current operating expenses and permanent improvements allocable to said funds; except that from the Undistributed Income Tax Fund, not less than fifteen-hundredths of 1 percent (0.15%) shall be used as required by the charter for the financing of permanent improvements, including the pledging of such tax revenue for payment of principal and interest on bonds and notes issued by the Municipality to finance permanent improvements.

(b) The revenues collected pursuant to the imposition of tax in Section 311-3(b) shall be deposited into the "Undistributed Income Tax Fund" and shall thereafter be allocated to the "Income Tax—Infrastructure Fund." Each year, council shall appropriate from said funds the amount of money it determines necessary for current operating expenses and permanent improvements allocable to said fund in accordance with the purposes set forth in Section 311-3(b).

#### **Section 311-9. – Definitions.**

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless the context clearly indicates or requires a different meaning. Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the

Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

**Section 311-9-A1. – Adjusted Federal Taxable Income.**

“Adjusted federal taxable income,” for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (d)(ii) of Section 311-9-N2, means a C corporation’s federal taxable income (or loss) before net operating losses and special deductions under the Internal Revenue Code, adjusted as follows:

- (a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;
- (b) Add an amount equal to five percent (5%) of intangible income deducted under Section 311-9-A1(a), but exclude that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
- (c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
- (d) (i) Except as provided in subsection (d)(ii) of Section 311-9-A1, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;  
  
(ii) Subsection (d)(i) of Section 311-9-A1 does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code;
- (e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
- (f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
- (g) For tax years beginning on or after January 1, 2016, deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income

derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Ohio Revised Code;

- (h) For tax years beginning on or after January 1, 2018, deduct net operating loss as provided in Section 311-21 of this chapter;
- (i) For tax years beginning on or after January 1, 2016, deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with subsection (d)(iii)(3)(B) of Section 311-59 of this chapter;
- (j) For tax years beginning on or after January 1, 2016, add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with subsection (d)(iii)(3)(B) of Section 311-59 of this chapter;
- (k) If the taxpayer is not a C corporation and is not an individual, and for tax years beginning on or after January 1, 2016 is neither a disregarded entity that has made the election described in Section 311-9-T6 nor a publicly traded partnership that has made the election described in subsection (d)(ii) of Section 311-9-N2, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
  - (i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member or former member, and for tax years beginning on or after January 1, 2016 a shareholder or former shareholder, shall not be allowed as a deductible expense unless, for tax years beginning on or after January 1, 2016, such payments are in consideration for the use of capital and treated as payment of interest under Section 469 of the Internal Revenue Code or United States treasury regulations; and
  - (ii) (1) For tax years beginning before January 1, 2016, amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction;
  - (2) For tax years beginning on or after January 1, 2016, amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member or former member, and amounts paid or accrued to or for life insurance for a partner, former

partner, shareholder, former shareholder, member or former member shall not be allowed as a deduction.

Nothing herein shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

This definition does not apply to any taxpayer required to file a return under Ohio Revised code section 5745.03 or to the net profit from a sole proprietorship.

#### **Section 311-9-A2. – Assessment.**

For tax years beginning on or after January 1, 2016, “assessment” means any of the following:

- (a) A written finding by the tax commissioner that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation;
- (b) A full or partial denial of a refund request issued under Section 311-71(c)(i) of this chapter;
- (c) The tax commissioner’s denial of a taxpayer’s request for use of an alternative apportionment method, issued under Section 311-17(b)(ii) of this chapter; or
- (d) The tax commissioner’s requirement for a taxpayer to use an alternative apportionment method, issued under Section 311-17(b)(iii) of this chapter.

An assessment shall commence the person's time limitation for making an appeal to the local board of review pursuant to Section 311-97 of this chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

"Assessment" does not include notice(s) denying a request for refund issued under Section 311-71(c)(ii) of this chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, the tax commissioner's request for additional information, a notification to the taxpayer of mathematical errors, or the tax commissioner's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by this section.

#### **Section 311-9-A3. – Audit.**

“Audit” means the examination of a person, or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the tax commissioner, for the purpose of determining liability for a municipal income tax. "Audit" includes those examinations and inspections conducted as set forth in more detail in Section 311-79 of this chapter.

**Section 311-9-B1. – Board of Review.**

“Board of Review” means the board created by and constituted as provided in Section 311-97 of this chapter.

**Section 311-9-B2. – Business.**

“Business” means an enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, pass-through entity, corporation or any other entity, including but not limited to the renting or leasing of property, whether real, personal or mixed. “Business” conducted within the Municipality includes the direct or indirect ownership of an interest in a pass-through entity that conducts business within the Municipality.

**Section 311-9-C1. – Calendar Quarter.**

“Calendar quarter” means the three-month period ending on the last day of March, June, September, or December.

**Section 311-9-C2. – Capital Asset; Capital Gain or Loss.**

“Capital asset” has the meaning as specifically defined by Section 1221 of the Internal Revenue Code, and a “capital gain or loss” means the gain or loss from the sale or exchange of a capital asset.

**Section 311-9-C3. – Casino Operator; Casino Facility.**

"Casino operator" and "casino facility" have the same meanings as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and section 3772.01 of the Ohio Revised Code.

**Section 311-9-C4. – Certified Mail; Express Mail; United States Mail; Postal Service.**

"Certified mail," "express mail," "United States mail," "postal service," and similar terms include any delivery service authorized pursuant to Ohio Revised Code section 5703.056.

**Section 311-9-C5. – Chapter.**

“Chapter” means Chapter 311 of the Cincinnati Municipal Code.

**Section 311-9-C6. – Corporation.**

“Corporation” means a corporation, joint stock association or an S corporation organized under the laws of the United States, the State of Ohio, or any other state, territory or foreign country or dependency. The term “corporation” also includes an



entity treated as a corporation for federal income tax purposes, including, but not limited to, publicly traded partnerships, regulated investment companies, real estate investment trusts and partnerships and limited liability companies that elect to be treated as corporations for federal income tax purposes. The term “corporation” also includes a “combined company,” an “electric company,” and a “telephone company,” all as is defined in Ohio Revised Code section 5727.01. Finally, the term “corporation” does not include a limited liability company that is treated as a partnership for federal income tax purposes.

#### **Section 311-9-D1. – Disregarded Entity.**

"Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

#### **Section 311-9-D2. – Domicile.**

“Domicile” means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he or she is absent he or she intends to return. A taxpayer has only one domicile even though he or she may have more than one residence.

- (a) An individual is presumed to be domiciled in the Municipality for all or part of a taxable year if the individual was domiciled in the Municipality on the last day of the immediately preceding taxable year or if the tax commissioner reasonably concludes that the individual is domiciled in the Municipality for all or part of the taxable year.
- (b) An individual may rebut the presumption of domicile described in subsection (a) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the Municipality for all or part of the taxable year.
- (c) For the purpose of determining whether an individual is domiciled in the Municipality for all or part of a taxable year, the factors that may be considered are those set forth in Ohio Revised Code section 718.012.

#### **Section 311-9-E1. – Employee.**

“Employee” means one who works for qualifying wages in the services of an employer.

#### **Section 311-9-E2. – Employer.**

“Employer” means either of the following:

- (a) An individual, corporation, pass-through entity, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a qualifying wages basis; or
- (b) An individual, pass-through entity, corporation or any other entity who or that promotes, books or contracts for individuals or groups to perform or entertain at their place of business, or rents facilities for the purpose of providing such entertainment.

Solely with respect to persons engaged to provide domestic service at a private residence, for tax years beginning prior to January 1, 2016, the term “employer” does not include any person who employs domestic help for such person’s private residence.

### **Section 311-9-E3. – Exempt Income.**

“Exempt income” means those sources of income not subject to taxation as specifically set forth in Section 311-15 of this chapter. Any other source of income, benefits, or other forms of compensation not specifically delineated in Section 311-15 shall be a taxable source of income.

Any item of income that is exempt income of a pass-through entity under Section 311-15 of this chapter is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

### **Section 311-9-F1. – Fiscal Year.**

“Fiscal year” means an accounting period of twelve (12) months or less ending on any day other than December 31.

### **Section 311-9-F2. – Form 2106.**

“Form 2106” means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

### **Section 311-9-G1. – Generic Form.**

“Generic form” means an electronic or paper form designed for reporting taxes withheld by an employer, agent of an employer, or other payer, for reporting estimated municipal income taxes and annual municipal income tax liability, or for filing a refund claim and that is not prescribed by the Municipality for the reporting of municipal income tax but that comports with the requirements of Ohio Revised Code section 718.05 and this chapter.

### **Section 311-9-G2. – Gross Receipts.**

“Gross receipts” means the total income of taxpayers from whatever source derived.

## **Section 311-9-I1. – Income.**

“Income” means the following:

- (a) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident, regardless of where such business is conducted, and any net profit of the resident, except as provided in subsection (d) of Section 311-9-N2 and except as provided in Section 311-15. For the purposes of this subsection (a):
  - (i) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to subsection (a)(iii) of this section. The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.
  - (ii) Subsection (a)(i) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation.
  - (iii) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.
- (b) For nonresidents:
  - (i) For tax years beginning prior to January 1, 2016:
    - (1) All qualifying wages earned or received by the nonresident for work done, services performed or rendered in the Municipality, including any net profits earned or received from the operation or conduct of business in the Municipality;
    - (2) "Income" includes a nonresident owner's distributive share of the net profits of a pass-through entity earned from business conducted in the Municipality, whether or not such pass-through entity has an office or place of business in the Municipality; and

- (3) Where a nonresident is employed at a place of business in the Municipality, the qualifying wages of such nonresident for the performance of employee services will be treated as earned outside the municipality only for those services which of necessity, as distinguished from convenience, obligate such nonresident to duties outside the municipality in the service of the nonresident's employer;
- (ii) For tax years beginning on or after January 1, 2016, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident;
- (iii) Net profits from a business or profession conducted both within and without the boundaries of the Municipality shall be apportioned as set forth in Section 311-17 of this chapter.
- (c) For tax years beginning prior to January 1, 2016, a corporation's net profit derived from business conducted in the Municipality, regardless of whether such corporation has an office or place of business in the Municipality; and, for tax years beginning on or after January 1, 2016, the net profit of any taxpayer that is not an individual.
- (d) All lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards of residents regardless of where derived, and those derived by nonresidents from activities within the Municipality. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Sections 311-31 and 311-51 of this chapter.

### **Section 311-9-I2. – Intangible Income.**

“Intangible income” means income of any of the following types as specified in Ohio Revised Code section 718.01(A)(5): income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. “Intangible income” does not include prizes, awards, or other income

associated with any lottery winnings, gambling winnings, or other similar games of chance.

**Section 311-9-I3. – Internal Revenue Code.**

“Internal Revenue Code” means the Internal Revenue Code of 1986, 100 Stat 2085, 26 U.S.C. 1, as amended.

**Section 311-9-J. – Joint Economic Development District.**

“Joint Economic Development District” means districts created under the Ohio Revised Code sections 715.70, 715.71, or 715.72 as amended, and includes Joint Economic Zones created under Ohio Revised Code section 715.691, as amended.

**Section 311-9-L1. – Limited Liability Company.**

“Limited liability company” means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

**Section 311-9-M1. – Municipal Corporation.**

“Municipal corporation” means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 718.691 or 715.74 of the Ohio Revised Code.

**Section 311-9-M2. – Municipal Taxable Income.**

“Municipal taxable income” means the following:

- (a) (i) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the Municipality under Section 311-17 of this chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality;
- (ii) For an individual who is a resident of the Municipality, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in subsection (b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality;
- (iii) For an individual who is a nonresident of the Municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the Municipality under Section 311-17 of this chapter,

then reduced as provided in subsection (b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

- (b) In computing the municipal taxable income of a taxpayer who is an individual, an employee who receives qualifying wages and who pays business expenses without reimbursement from his or her employer shall be entitled to a deduction, as provided in subsections (a)(ii) and (a)(iii) of this section, as follows:
  - (i) For tax years beginning prior to January 1, 2016, to the same extent allowed for federal income tax purposes, or which would otherwise be allowed if the taxpayer had not used the standard deduction when filing his or her federal income tax return, but only to the extent that such expenses are considered ordinary, necessary and reasonable and are incurred in earning the specific qualifying wages. In no case shall the total of such deductions exceed the taxpayer's qualifying wages received from his or her employer;
  - (ii) For tax years beginning on or after January 1, 2016, to the same extent reported on the individual's form 2106 and deducted for federal income tax purposes for the tax year, subject to the limitation imposed by Section 67 of the Internal Revenue Code. A resident taxpayer may deduct all such expenses allowed for federal income tax purposes. A nonresident taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in the Municipality.

**Section 311-9-M3. – Municipality.**

“Municipality” means the City of Cincinnati, Ohio.

**Section 311-9-N1. – Net Operating Loss.**

- (a) “Net operating loss” means a loss incurred by a person in the operation of a trade or business. “Net operating loss” does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (b) “Net operating loss” for a taxpayer other than an individual means adjusted federal taxable income, to the extent the application of section 311-9-A1 results in a number less than zero.
- (c) “Net operating loss” for a taxpayer who is an individual means the individual's net loss required to be reported on Internal Revenue Service schedule C, schedule E, or schedule F.

**Section 311-9-N2. – Net Profit.**

- (a) “Net profit” for a taxpayer other than an individual means adjusted federal taxable income.
- (b) “Net profit” for a taxpayer who is an individual means the individual's net profit required to be reported on Internal Revenue Service schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of this subsection (b) of this section, the net operating loss carried forward shall be calculated and deducted as provided in section 311-21 of this chapter. As set forth in subsection 311-21(c), pre-2017 net operating losses carried forward shall be calculated and deducted against net profit subsequent to apportionment for tax years beginning prior to January 1, 2018, and net operating losses incurred in tax years beginning on or after January 1, 2017 that are carried forward shall be calculated and deducted prior to apportionment for tax years beginning on or after January 1, 2018.
- (c) For tax years beginning on or after January 1, 2016, and notwithstanding subsection (a) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.
- (d)
  - (i) For tax years beginning on or after January 1, 2016, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in subsection (d)(ii) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.
  - (ii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election on the annual municipal tax return in every municipal corporation in which the partnership is subject to taxation on its net profits. The election is binding for a five-year period beginning with the first (1<sup>st</sup>) taxable year of the initial election, and for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation under subdivision (d)(iii) of this section.
  - (iii) An election to discontinue filing as a C corporation must be made in the first (1<sup>st</sup>) year following the last year of a five-year election period in effect under subsection (d)(ii) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first (1<sup>st</sup>) taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership. An election to discontinue filing as a partnership must be made in the first (1<sup>st</sup>) year following the last year of a five-year election period.
  - (iv) Each resident individual owner of a publicly traded partnership not electing to file municipal income tax returns as a C corporation shall be required to file a return

with the Municipality and report such owner's partnership distribution of net profit on that return.

- (e) In determining “net profit,” no deduction shall be allowed for any amount paid or accrued in respect of federal self-employment tax.

**Section 311-9-N3. – Nonqualified Deferred Compensation Plan.**

“Nonqualified deferred compensation plan” means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

**Section 311-9-N4. – Nonresident.**

“Nonresident” means any individual domiciled outside the Municipality.

**Section 311-9-N45. – Nonresident Owner.**

“Nonresident owner” means an individual domiciled outside the Municipality who has a direct or indirect ownership interest in a pass-through entity that conducts business in the Municipality, and a corporation that has a direct or indirect ownership interest in a pass-through entity that conducts business in the Municipality.

**Section 311-9-O1. – Ohio Business Gateway.**

“Ohio Business Gateway” means the online computer network system, initially created by the Ohio Department of Administrative Services under Ohio Revised Code section 125.30, that allows persons to electronically file business reply forms with Ohio agencies, and includes any successor electronic filing and payment system.

**Section 311-9-O2. – Organization.**

“Organization” means a corporation for profit or not for profit, a pass-through entity, estate, trust, or other commercial or legal entity. “Organization” does not include an entity organized as or by a governmental agency for the execution of a government program.

**Section 311-9-O3. – Other Payer.**

“Other payer” means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual for federal income tax purposes. "Other payer" includes casino operators and video lottery terminal sales agents.

**Section 311-9-O4. – Owner.**

“Owner” means an individual, partner, member, corporation, or any other person having an ownership interest in a pass-through entity.



**Section 311-9-P1. – Pass-through Entity.**

“Pass-through entity” means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, or any other class of entity the income or profits of which are given pass-through treatment for federal income tax purposes. For tax years beginning before January 1, 2016, "pass-through entity" does not include an S corporation. For tax years beginning on or after January 1, 2016, a "pass-through entity" does not include an S corporation, trust, estate, grantor of a grantor trust, or disregarded entity.

**Section 311-9-P2. – Pension.**

“Pension” means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

**Section 311-9-P3. – Person.**

“Person” includes individuals, pass-through entities, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity. Whenever used in this chapter in any provision prescribing and imposing a penalty, “person,” as applied to a pass-through entity, shall mean the owner thereof, and as applied to a corporation, the officers thereof.

**Section 311-9-P4. – Place of Business.**

“Place of business” means any bona fide office (other than a statutory office), factory, warehouse or other space that is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of the taxpayer’s employees, regularly in attendance.

**Section 311-9-P5. - Postal Service.**

"Postal service" means the United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

**Section 311-9-P6. - Postmark Date; Date of Postmark.**

"Postmark date," "date of postmark," and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed indicating the date on which the payment or document was given to the delivery service for delivery.

#### **Section 311-9-P7. - Pre-2017 Net Operating Loss Carryforward.**

"Pre-2017 net operating loss carryforward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by ordinance adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in the Municipality in future taxable years.

For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, as provided in Section 311-21(c) of this chapter.

#### **Section 311-9-P8. - Principal Place of Business.**

"Principal place of business" means, in the case of an employer having headquarters activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters activities at a place of business within the Municipality, the term means the largest place of business located in the Municipality.

#### **Section 311-9-P9. - Publicly Traded Partnership.**

"Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

#### **Section 311-9-Q. - Qualifying Wages.**

"Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, including any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code and included in wages, adjusted as follows:

(a) Deduct the following amounts:

- (i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code;
- (ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer;

- (iii) Any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option; and
  - (iv) Any amount included in wages that is exempt income.
- (b) Add the following amounts:
- (i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986;
  - (ii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Subsection (b)(ii) of this section applies only to employee contributions and employee deferrals;
  - (iii) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages;
  - (iv) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code; and
  - (v) Any amount not included in wages if all of the following apply:
    - (1) For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;
    - (2) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;
    - (3) For no succeeding taxable year will the amount constitute wages; and
    - (4) For any taxable year the amount has not otherwise been added to wages pursuant to either subsection (b) of this section or section 718.03 of the Ohio Revised Code, as that section applied to tax years prior to January 1, 2016.

**Section 311-9-R1. - Related Entity.**

"Related entity" means any of the following:

- (a) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
- (b) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
- (c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under subsection (d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent (50%) of the value of the corporation's outstanding stock;
- (d) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in subsections (a) to (c) of this section have been met.

#### **Section 311-9-R2. - Related Member.**

"Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty percent" (20%) shall be substituted for "5 percent" (5%) wherever "5 percent" (5%) appears in section 1563(e) of the Internal Revenue Code.

#### **Section 311-9-R3. - Resident.**

"Resident" means an individual who is domiciled in the Municipality as determined under Section 311-9-D2 of this chapter.

#### **Section 311-9-R4- Resident Owner.**

"Resident owner" means an individual domiciled in the Municipality who has an ownership interest in a pass-through entity.

#### **Section 311-9-R45. Rules and Regulations.**

"Rules and Regulations" means the rules and regulations as promulgated under this chapter.

**Section 311-9-S41. - S Corporation.**

"S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

**Section 311-9-S2. - Schedule C.**

"Schedule C" means Internal Revenue Service schedule C (form 1040) filed by a taxpayer with his federal income tax return.

**Section 311-9-S3. - Schedule E.**

"Schedule E" means Internal Revenue Service schedule E (form 1040) filed by a taxpayer with his federal income tax return.

**Section 311-9-S4. - Schedule F.**

"Schedule F" means Internal Revenue Service schedule F (form 1040) filed by a taxpayer with his federal income tax return.

**Section 311-9-S5. - Single Member Limited Liability Company.**

"Single member limited liability company" means a limited liability company that has one direct member.

**Section 311-9-S6. - Small Employer.**

"Small employer" means any employer that had total revenue of less than five hundred thousand dollars (\$500,000) during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subsection; or any entity treated as a government for financial accounting and reporting purposes.

**Section 311-9-T1. – Tax Administrator.**

"Tax administrator" has the same meaning as Ohio Revised Code section 718.01(U).

**Section 311-9-T2. - Tax Commissioner.**

"Tax commissioner" means the person appointed to administer the City of Cincinnati's Municipal Income Tax Ordinance and to direct the operation of the City of Cincinnati's Municipal Income Tax Division or the person executing the duties of the tax commissioner.

**Section 311-9-T3. - Tax Return Preparer.**

"Tax return preparer" means any individual other than a taxpayer who is described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15 and is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

**Section 311-9-T4. - Tax Year; Taxable Year.**

"Tax year" or "taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code and used by the taxpayer for federal income tax purposes.

**Section 311-9-T5. - Taxing Municipality.**

"Taxing municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.

**Section 311-9-T6. - Taxpayer.**

- (a) "Taxpayer" means a person, whether an individual, pass-through entity or corporation, subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in subsection (b) of this section, a disregarded entity, but "taxpayer" does include any person who owns the disregarded entity.
- (b) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the conditions of Ohio Revised Code section 718.01(L)(2) are met.

**Section 311-9-T7. - Taxpayers' Rights and Responsibilities.**

"Taxpayers' rights and responsibilities" means the rights provided to taxpayers in sections 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the Ohio Revised Code and any corresponding ordinances of the Municipality, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax

and otherwise comply with Chapter 718 of the Ohio Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

**Section 311-9-T8. - Trade or Business Asset.**

"Trade or business asset" means personal property used in a trade or business of a character that is subject to the allowance for depreciation as provided in Section 167 of the Internal Revenue Code, and real property used in a trade or business.

**Section 311-9-V1. - Video Lottery Terminal.**

"Video lottery terminal" has the same meaning as in section 3770.21 of the Ohio Revised Code.

**Section 311-9-V2. - Video Lottery Terminal Sales Agent.**

"Video lottery terminal sales agent" means a lottery sales agent licensed under Chapter 3770 of the Ohio Revised Code to conduct video lottery terminals on behalf of the state pursuant to section 3770.21 of the Ohio Revised Code.

**Section 311-11. – Determining Municipal Taxable Income for Individuals.**

- (a) "Municipal Taxable Income" for a resident of the Municipality is calculated as follows: "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in subsection (b) of Section 311-9-M2 of this chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward." Notwithstanding any other provision of this chapter, the income of members and employees of the Ohio General Assembly and certain judges is subject to tax by the Municipality only as permitted by Ohio Revised Code section 718.50.
- (b) "Municipal Taxable Income" for a nonresident of the Municipality is calculated as follows: "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, as applicable, apportioned or situated to the Municipality as provided in Section 311-17 of this chapter, reduced by allowable employee business expense deduction as found in subsection (b) of Section 311-9-M2 of this chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward."
- (c) Relevant terms are defined in the definition sections of this chapter with further clarification as follows:
  - (i) "Net profit" is included in "income," and is defined in Section 311-9-N2 of this chapter. The net operating loss carryforward shall be calculated and deducted as provided in Section 311-21.

- (1) Treatment of net profits received by an individual taxpayer from rental real estate is provided in Section 311-17(e).
- (2) “Net profit” for a nonresident individual includes any net profit of the nonresident, but excludes the distributive share of net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
- (ii) Allowable employee business expense deduction is described in subsection (b) of Section 311-9-M2 of this chapter, and is subject to the limitations provided in that section. For a nonresident of the Municipality, the deduction is limited to the extent the expenses are related to the performance of personal services by the nonresident in the Municipality.
- (iii) “Apportioned or situated to the Municipality as provided in Section 311-17 of this Chapter” includes the apportionment of net profit income attributable to work done or services performed in the Municipality.

**Section 311-13. – Determining Municipal Taxable Income for Taxpayers Who are Not Individuals.**

- (a) “Municipal Taxable Income” for a taxpayer who is not an individual is calculated as follows: “Income” reduced by “Exempt Income” to the extent otherwise included in income, multiplied by apportionment, further reduced by any “Pre-2017 Net Operating Loss Carryforward.”
- (b) Relevant terms are defined in the definition sections of this chapter with further clarification as follows:
  - (i) “Income” for a taxpayer that is not an individual means the “net profit” of the taxpayer.
  - (ii) “Apportionment” means the apportionment as determined by Section 311-17 of this Chapter.

**Section 311-15. – Exception to the Tax; Exempt Income.**

The tax provided for herein shall not be levied upon the following “exempt income”:

- (a) Proceeds from welfare benefits, unemployment compensation, pensions, social security benefits, railroad retirement benefits, and retirement benefit payments as defined by the Internal Revenue Service, except to the extent that such amounts are included in the definition of qualifying wages provided in this chapter. As used herein, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code;
- (b) Proceeds of sickness, accident, or liability insurance policies, payments from annuities, and similar payments made to an employee or to the beneficiary of an



- employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations; compensation for personal injury and like reimbursements, excluding compensation paid for loss of profits and salaries or wages or awards for punitive damages;
- (c) Dues, contributions and similar payments received by charitable, religious, educational, or literary organizations, or labor unions, trade or professional associations, lodges and similar organizations;
  - (d) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income derived from the operation of a trade or business;
  - (e) Alimony and child support received;
  - (f) Compensation for damage to property from insurance proceeds or otherwise;
  - (g) Intangible income;
  - (h) The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state;
  - (i) The income of any religious, charitable, scientific, literary, educational, fraternal or other institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities, but income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall be taxable. In the event taxable income is generated from real or personal property ownership or an income producing business located both within and without the corporate limits of the Municipality, income shall be apportioned to the Municipality under the method provided in Section 311-17;
  - (j) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from municipal income tax;
  - (k) The rental value of a home furnished to a minister of the gospel as part of his or her compensation, or the rental allowance paid to a minister of the gospel as part of his or her compensation, to the extent used to rent or provide a home pursuant to section 107 of the Internal Revenue Code;
  - (l) Compensation paid under sections 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000) for the taxable year may be

subject to municipal taxation, but the payer of such compensation is not required to withhold any municipal income tax from that compensation;

- (m) For tax years prior to January 1, 2016, compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to municipal income tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality;
- (n) Compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year for years prior to January 1, 2016 and twenty (20) or fewer days in a calendar year for years beginning on or after January 1, 2016, except as permitted by Section 311-27 of this chapter. For purposes of this subsection (n), "compensation" means any form of remuneration paid to an employee for personal services;
- (o) Income of a public utility when that public utility is subject to the tax levied under sections 5727.24 or 5727.30 of the Ohio Revised Code. This provision does not apply for purposes of Chapter 5745 of the Ohio Revised Code;
- (p) Employee compensation that is not qualifying wages as defined in Section 311-9-Q of this chapter;
- (q) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is a resident of the Municipality;
- (r) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code;
- (s) Any compensation arising from the grant, sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option;
- (t) (i) For tax years beginning on or after January 1, 2016, except as provided in divisions (ii), (iii), and (iv) of this subsection, qualifying wages described in subsection (b)(i) or (e) of Section 311-27 of this chapter to the extent the qualifying wages are not subject to withholding for municipal income tax under either of those divisions;

- (ii) The exemption provided in division (i) of this subsection does not apply to employees who resided in the Municipality at the time the employee earned the qualifying wages;
- (iii) The exemption provided in division (i) of this subsection does not apply to qualifying wages that an employer elects to withhold under subsection (d)(ii) of Section 311-27 of this chapter;
- (iv) The exemption provided in division (i) of this subsection does not apply to qualifying wages if both of the following conditions apply:
  - (1) For qualifying wages described in subsection (b)(i) of Section 311-27 of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in subsection (e) of Section 311-27 of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located; and
  - (2) The employee receives a refund of the tax described in subsection (t)(iv)(1) of this section on the basis of the employee not performing services in that municipal corporation;
- (u) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Ohio Revised Code section 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence; and
- (v) Income the taxation of which is prohibited by the constitution or laws of the United States.

**Section 311-17. – Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment.**

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.

- (a) Net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the

Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

- (i) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property or tangible personal property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8);

- (ii) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 311-27 of this chapter.

As used in the preceding paragraph, persons employed shall not be construed to mean any subcontractor or independent contractor;

- (iii) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (b)(i) If the apportionment factors described in subsection (a) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the tax commissioner may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method. For tax years beginning on or after January 1, 2016, only those alternative apportionment methods set forth in Ohio Revised Code section 718.02(B) may be used.
  - (ii) A taxpayer request to use an alternative apportionment method shall be in writing.
    - (1) For tax years beginning before January 1, 2016, the request must be made before the end of the tax year and must state the specific grounds on which the request for permission to use an alternative method is based. Once a taxpayer has filed under an alternative method, the taxpayer must continue to so file until given permission to change by the tax commissioner.
    - (2) For tax years beginning on or after January 1, 2016, the request shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method

unless the tax commissioner denies the request in an assessment issued within the period prescribed by subsection (a) of Section 311.99 of this chapter. Nothing in this subdivision (2) nullifies or otherwise affects any alternative apportionment arrangement approved by the tax commissioner or otherwise agreed upon by both the tax commissioner and taxpayer prior to January 1, 2016.

- (iii) For tax years beginning on or after January 1, 2016, the tax commissioner may require a taxpayer to use an alternative apportionment method as described in subsection (b)(i) of this section only by issuing an assessment to the taxpayer within the period prescribed by subsection (a) of Section 311.99 of this Chapter.
- (iv) Nothing in subsection (b) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the tax commissioner or otherwise agreed upon by both the tax commissioner and taxpayer before January 1, 2016.
- (c) For tax years beginning on or after January 1, 2016 and as used in subsection (a)(ii) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the locations set forth in Ohio Revised Code section 718.02(C).
- (d) For the purposes of subsection (a)(iii) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
  - (i) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of tangible personal property originates in the Municipality if, regardless of where title passes, the property meets any of the following criteria:
    - (1) The property is shipped to or delivered within the Municipality from a stock of goods located within the Municipality;
    - (2) The property is delivered within the Municipality from a location outside the Municipality, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion; or
    - (3) The property is shipped from a place within the Municipality to purchasers outside the Municipality, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
  - (ii) Gross receipts from the sale of services shall be situated to the Municipality to the extent that such services are performed in the Municipality.

- (iii) To the extent included in income, gross receipts from the sale of real property located in the Municipality shall be situated to the Municipality.
  - (iv) To the extent included in income, gross receipts from rents and royalties from real property located in the Municipality shall be situated to the Municipality.
  - (v) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
- (e) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides. Taxpayers shall use separate accounting for the purpose of calculating net profit situated under this division to the Municipality for property located within the Municipality.
- (f) (i) Except as provided in subsection (f)(ii) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the Municipality based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the Municipality to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (ii) An individual who is a resident of the Municipality shall report the individual's net profit from all real estate activity on the individual's annual tax return for that Municipality. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 311-47 of this chapter.
- (g) When calculating the ratios described in subsection (a) of this section for the purposes of that subsection or subsection (b) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

### **Section 311-19. – Stock Option Adjustment.**

If, in computing the taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under subsection (p) of Section 311-15 and subsection (a)(iii) of Section 311-9-Q of this chapter or a corresponding section of another municipal income tax code, the taxpayer shall add the amount that is exempt

from taxation to the taxpayer's net profit that was apportioned to the Municipality. In no case shall a taxpayer be required to add to its net profit that was apportioned to the Municipality any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This subsection applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to the Municipality under Section 311-17 of this chapter.

**Section 311-21. – Net Operating Loss (NOL).**

- (a) Except as limited by subsections (b), (h) and (i) of this Section 311-21, any net operating loss incurred by a taxpayer in a taxable year beginning on or after January 1, 2017 shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
- (b) No portion of a net operating loss shall be carried back against net profits of any prior year, and no portion of a net operating loss may offset qualifying wages.
- (c) A pre-2017 net operating loss sustained shall be apportioned to the Municipality in the same manner as provided in Section 311-17 of this chapter for apportioning net profits to the Municipality. For tax years beginning prior to January 1, 2017 a net operating loss sustained in any taxable year that is apportioned to the Municipality may be applied against the net profit of succeeding tax years that is apportioned to the Municipality, until exhausted, but in no event for more than five (5) taxable years immediately following the year in which the loss occurred.
- (d) The distributive share of the net profit of each pass-through entity owned directly or indirectly by the taxpayer shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current year.
- (e) The tax commissioner shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined.
- (f) The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carry forward loss deduction to the surviving or new taxpayer.
- (g) If a taxpayer who is an individual is engaged in two (2) or more taxable business activities to be included in the same return, the net loss apportioned to the Municipality of one unincorporated business activity may offset the profits apportioned to the Municipality of another unincorporated taxable business for

purposes of arriving at the overall net profits of the taxpayer that are subject to municipal income tax.

- (h) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a taxpayer may not deduct more than fifty percent (50%) of the amount of the post-2017 deduction otherwise allowed by subsection (a) of this section.
- (i) Any pre-2017 net operating loss carry forward deduction must be utilized before a taxpayer may deduct any amount pursuant to subsection (a) of this Section 311-21.
- (j) Nothing in subsection (h) of this Section 311-21 precludes a taxpayer from carrying forward, for the period otherwise permitted under subsection (a) or subsection (c) of this Section 311-21, any amount of net operating loss that was not fully utilized.

**Section 311-23. – Collection at Source; Withholding from Qualifying Wages.**

- (a) (i) Each employer, agent of an employer, or other payer located within, or doing business within, the Municipality who employs one or more persons on a qualifying wages basis shall withhold from each employee an amount equal to 2.1 percent (2.1%) of the qualifying wages earned by the employee in the Municipality, except for qualifying wages for which withholding is not required under Section 311-27 of this chapter or under subsections (a)(iii) or (d) of this section. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.
  - (1) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages only to the extent that the tips and gratuities are paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
  - (2) For tax years beginning prior to January 1, 2016, no person is required to deduct and withhold municipal income tax on the qualifying wages or other taxable income paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing municipal income tax returns and paying municipal income tax due on their qualifying wages.
- (ii) In addition to withholding the amounts required under subsection (a)(i) of this section, an employer, agent of an employer, or other payer may also deduct and withhold municipal income taxes at the request of an employee who is a resident of the Municipality. The tax commissioner shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to



be withheld by this chapter to be tax required to be withheld and remitted for the purposes of this section.

(iii) An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(b) An employer, agent of an employer, or other payer shall make a return and remit to the tax commissioner the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer, along with any report required by the tax commissioner to accompany such payment, according to the following schedule:

(i) Any employer, agent of an employer, or other payer not required under subsections (b)(ii) or (b)(iii) of this section to make monthly or semimonthly payments of municipal income taxes required to be deducted and withheld shall make quarterly payments not later than the last day of the month following the end of each calendar quarter ending prior to January 1, 2016 and not later than the fifteenth (15<sup>th</sup>) day of the month following the end of each calendar quarter beginning on or after January 1, 2016.

(ii) (1) Taxes required to be deducted and withheld during any calendar year ending prior to January 1, 2016 shall be remitted monthly to the tax commissioner if the total taxes deducted and withheld or required to be deducted and withheld in the preceding calendar year were more than \$3,600.00 or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded three hundred dollars (\$300) per month.

(2) Taxes required to be deducted and withheld during any calendar year beginning on or after January 1, 2016 shall be remitted monthly to the tax commissioner if the total taxes deducted and withheld or required to be deducted and withheld in the preceding calendar year were more than \$2,399.00 or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded two hundred dollars (\$200) per month.

(3) Payment under subsection (b)(ii) of this section shall be made so that the payment is received by the tax commissioner not later than fifteen (15) days after the last day of each month.

(iii) Beginning January 1, 2016, taxes required to be deducted and withheld shall be remitted semimonthly to the tax commissioner if the total taxes deducted and withheld or required to be deducted on behalf of the Municipality in the preceding calendar year were more than \$11,999.00, or if the total amount of taxes deducted

and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar year exceeded \$1,000. The payment under subsection (b)(iii) of this section shall be made so that the payment is received by the tax commissioner not later than one of the following:

- (1) If the taxes were deducted and withheld or required to be deducted and withheld during the first fifteen (15) days of a month, the third (3<sup>rd</sup>) banking day after the fifteenth (15<sup>th</sup>) day of that month; or
  - (2) If the taxes were deducted and withheld or required to be deducted and withheld after the fifteenth (15<sup>th</sup>) day of a month and before the first (1<sup>st</sup>) day of the immediately following month, the third (3<sup>rd</sup>) banking day after the last day of that month.
- (iv) An employer, agent of an employer or other payer that is required by 26 USC 6302 and 26 CFR 31.6302-1, or any other federal statutes or regulations, to make payments electronically for the purpose of paying federal taxes withheld on payments to employees shall make payment by electronic funds transfer to the tax commissioner of all taxes deducted and withheld on behalf of the employee for remittance to the Municipality. The payment of tax by electronic funds transfer under this subsection does not affect an employer's, an agent's, or another payer's obligation to file any return as required under this Section 311-23. Once the threshold for remitting payment electronically for federal purposes has been met, any accrued municipal income tax withheld from employee qualifying wages earned within the Municipality shall be remitted to the Municipality at the same time that the federal tax withholding payment is due.
- (v) The tax commissioner shall adopt rules governing the remittance of withheld municipal income taxes by electronic funds transfer as required by this chapter. The tax commissioner may grant an exemption to an employer from the duty to make payment by electronic funds transfer upon application for such exemption by the employer and the employer's demonstration to the tax commissioner that the requirement to make payment by electronic funds transfer will impose a hardship upon the employer. The tax commissioner may implement means of acknowledging, upon request of a taxpayer, receipt of electronic tax remittances. The person requesting acknowledgement shall pay the cost of acknowledging receipt of electronic remittances.
- (vi) An employer, agent of an employer, or other payer shall make and file a return showing the amount of municipal income taxes withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the tax commissioner on a form or forms prescribed by or acceptable to the tax commissioner and subject to the rules and regulations prescribed therefore by the tax commissioner. An employer may report the amount of municipal income tax withheld from qualifying wages paid on or after January 1, 2007, and may remit such amounts, by using the Ohio business gateway. A return filed by an employer, agent, or other payer under this division shall be accepted by the

Municipality as the return required of an employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.

- (c) (i) An employee is not relieved from liability for municipal income tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this Section 311-23 or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
- (ii) The failure of an employer, agent of an employer, or other payer to remit to the Municipality the municipal income tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
- (d) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (e) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the Municipality until such time as the withheld amount is remitted to the tax commissioner.
- (f) All officers, members, managers, employees, trustees of the employer, agents of an employer, or other payers with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be jointly and severally personally liable for a failure to file a report or pay the tax due as required by this section. For tax years beginning prior to January 1, 2016, such person shall also be jointly and severally personally liable for any related interest and penalties and are also liable under the provisions of Section 311-999. The dissolution of an employer, agent of an employer, or other payer does not discharge an officer's employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.

A failure to file any return under this section may result in interest and civil penalties pursuant to Section 311-73 and Section 311-75 of this chapter.

#### **Section 311-25. – Qualifying Wages Withholding Return; List of Employees.**

- (a) (i) On or before the last day of February of each year, an employer shall file a withholding tax reconciliation return with the tax commissioner showing the sum total of all qualifying wages paid to all employees, the portion of which, if any, was not subject to withholding along with an explanation for the same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted.

- (ii) Such return shall include information concerning each employee from whom the municipal income tax was withheld, or should have been withheld, during the preceding calendar year, showing the name, address, zip code and social security number of each such employee, the total amount of qualifying wages paid during the year and the amount of municipal income tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipal corporation, the name of each such municipal corporation and the amount of same shall be separately shown on the return of information to the Municipality concerning each employee. Any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee, and other information as may be required by the tax commissioner, also shall be included in the return.
  - (iii) Employers who are required to submit IRS Form W-2 information electronically for federal tax purposes shall submit the information required by the Municipality in electronic format. Except as otherwise provided in this paragraph, the submission of required information in an electronic format does not affect an employer's obligation to file the returns as required under this section.
- (b) The tax commissioner shall adopt rules governing the submission of the information required by this section. The tax commissioner may grant an exemption to an employer from the duty to submit the required information electronically upon application for such exemption by the employer and the employer's demonstration to the tax commissioner that the requirement to submit such information will impose a substantial hardship upon the employer.
- (c) In addition to the wage reporting requirements of this section, any business required by the Internal Revenue Service to report on Form 1099-MISC payments to individuals not treated as employees for services performed shall also report such payments to the tax commissioner when the services were performed in the Municipality. The information may be submitted on a listing that shall include the individual's name, address, social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before the last day of February following the end of the calendar year in which such payments are made.

**Section 311-27 – Collection at Source; Occasional Entrant.**

- (a) The following terms, as used in this section, shall have the meaning set forth herein:

- (i) "Employer" includes any person who:

- (1) Employs or contracts for the services of any professional entertainer(s) or professional athlete(s) to be performed in the Municipality or any person who,

acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any professional entertainer(s) or professional athlete(s) in the Municipality and who makes any payment arising from said appearance in the Municipality; or

(2) Rents facilities located in the Municipality that are made available to any professional entertainer(s) or professional athlete(s) for use in performing services in the Municipality and who makes any payment arising from said use of facilities to the professional entertainer(s) or professional athlete(s) for services performed in the Municipality; and

(3) Includes a person that is a related member to or of an employer.

- (ii) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
- (iii) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
- (iv) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
- (v) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
- (vi) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty (20) days during the calendar year. "Worksite location" does not include the home of an employee.
- (vii) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf

of the employer, but instead there are two (2) or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to subsection (b)(i)(2) of this section among those two (2) or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be deemed in accordance with subsection (b)(ii) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

- (b) (i) Subject to subsections (c), (e), (f), and (g) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in the Municipality if the employee performed such services in the municipal corporation on twenty (20) or fewer days in a calendar year beginning on or after January 1, 2016, or on twelve (12) or fewer days in a calendar year for years ending prior to January 1, 2016, unless one of the following conditions applies:
  - (1) For tax years ending before January 1, 2016, the individual is an employee of another person, the principal place of business of the individual's employer is located in another municipal corporation in Ohio that imposes a tax applying to compensation paid to the individual for services performed on those days, and the individual is not liable to that other municipal corporation for tax on the compensation paid for such services; or
  - (2) For tax years beginning on or after January 1, 2016, the employee's principal place of work is located in the Municipality; or
  - (3) For tax years beginning on or after January 1, 2016, the employee performed services at one or more presumed worksite locations in the Municipality. "Presumed worksite location" shall have the same meaning as set forth in Ohio Revised Code section 718.011; or
  - (4) The employee is a resident of the Municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 311-23 of this chapter; or

- (5) The employee is a professional entertainer, professional athlete, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure within the Municipality.
- (ii) For the purposes of subsection (b)(i) of this section, an employee shall be considered to have spent a day performing services in the Municipality only if the employee spent more time performing services for or on behalf of the employer in the Municipality than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
    - (1) Traveling to the location at which the employee will first perform services for the employer for the day;
    - (2) Traveling from a location at which the employee was performing services for the employer to any other location;
    - (3) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
    - (4) Transporting or delivering property described in subsection (b)(ii)(3) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer; or
    - (5) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (c) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in subsection (b)(i) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.
  - (d) (i) Except as provided in subsection (d)(ii) of this section, if, during a calendar year, the number of days an employee spends performing personal services in the Municipality exceeds the threshold described in subsection (b)(i) of this section, the employer shall withhold and remit tax to the Municipality for any subsequent

days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the Municipality.

- (ii) An employer required to begin withholding tax under subsection (d)(i) of this section may elect to withhold tax on behalf of the Municipality during the initial threshold period described in subsection (b)(i) of this section for days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.
- (iii) If an employer makes the election described in subsection (d)(ii) of this section, the taxes withheld and paid by such an employer during that initial threshold period to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.
- (e) Beginning January 1, 2016 and thereafter, without regard to the number of days in a calendar year on which an employee performs personal services in the Municipality, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the Municipality if the employer's fixed location is located in the Municipality and the employer qualifies as a small employer as defined in Section 311-9-S6 of this chapter. To determine whether an employer qualifies as a small employer for a taxable year, the tax commissioner may require the employer to provide the tax commissioner with the employer's federal income tax return for the preceding taxable year.
- (f) Subsections (b)(i) and (d) of this section shall not apply to the extent that the tax commissioner and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 311-23 of this chapter.
- (g) Withholding on the qualifying wages of a person performing personal services at a petroleum refinery located in the Municipality shall be consistent with Ohio Revised Code section 718.011(G).

#### **Section 311-29. – Collection at Source; Pass-through Entity.**

For tax years beginning prior to January 1, 2016, and except as otherwise provided in this Section 311-29, a pass-through entity that conducts business within the Municipality must withhold municipal income tax at the rate specified in Section 311-3 on each owner's distributive share of the pass-through entity's net profits attributable to the Municipality and remit such tax to the tax commissioner by the applicable dates provided in Section 311-37. A pass-through entity subject to this section shall use the form prescribed by the tax commissioner to return and remit municipal income tax withheld. Such pass-through entity shall be required to file a return and remit any withheld municipal income tax that remains outstanding as of the date specified in Section 311-41. A pass-through entity subject to this section that fails to collect or remit municipal income tax as provided herein shall be liable for the tax that it should have withheld or remitted and shall be subject to the interest and penalty provisions of



Sections 311-73, 311-75 and 311-999. The resident and nonresident owners shall receive a credit against their municipal income tax liabilities in the amount of the tax so withheld by the pass-through entity on their respective distributive shares of the pass-through entity's net profit. All claims for refund of municipal income tax withheld by a pass-through entity pursuant to this section must be made by the owner within the period set forth in Section 311-71.

A pass-through entity is not required to withhold and remit municipal income tax to the extent that its owners both file municipal income tax returns and declarations as provided in Sections 311-51 and 311-37, respectively, that report their distributive shares of the pass-through entity's net profits attributable to the Municipality; and pay municipal income tax thereon to the Municipality.

**Section 311-31. – Collection at Source; Casino and VLT.**

- (a) For tax years beginning on or after January 1, 2016, a casino facility or a casino operator, as defined in section 311-9-C3 of this chapter, or a lottery sales agent conducting video lottery terminals sales on behalf of the state shall withhold and remit municipal income tax with respect to amounts other than qualifying wages as provided in Section 718.031 of the Ohio Revised Code.
- (b) Amounts deducted and withheld on behalf of the Municipality shall be allowed as a credit against payment of the tax imposed by the Municipality and shall be treated as taxes paid for purposes of Section 311-33 of this chapter for the person for whom the amount is deducted and withheld.
- (c) The tax commissioner shall prescribe the forms of the receipts and returns required under this section.

**Section 311-33. – Declarations of Estimated Tax Required; Time for Filing.**

- (a) As used in this section:
  - (i) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.
  - (ii) "Tax liability" means the total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.
- (b) (i) Every person who anticipates any taxable income which is not subject to Section 311-23 hereof, or who engages in any business or activity, shall file a declaration of estimated income or the estimated profit or loss from such business activity on a form prescribed by the tax commissioner or a generic form, together with the estimated municipal income tax due thereon, if any. For tax years beginning on or

after January 1, 2016, a declaration shall only be required for the current taxable year if the amount payable as estimated taxes is at least \$200.

(ii) Notwithstanding subsection (b)(i) above, if a person's income is wholly from qualifying wages from which the tax will be withheld and remitted to the Municipality in accordance with Section 311-23 and/or the distributive share of net profit from which the tax will be withheld and remitted to the Municipality in accordance with Section 311-29, such person need not file a declaration.

(iii) For tax years beginning on or after January 1, 2016:

(1) Taxes withheld from qualifying wages shall be considered as paid to the Municipality in equal amounts on each payment date or, if the taxpayer establishes the dates on which all amounts were actually withheld, on the dates on which the amounts were actually withheld.

(2) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(3) A taxpayer having a taxable year of less than twelve (12) months shall make a declaration under rules prescribed by the tax commissioner.

(4) Taxes withheld by a casino operator or by a lottery sales agent under section 718.031 of the Ohio Revised Code are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.

(iv) Taxpayers filing joint returns shall file joint declarations of estimated taxes.

(v) The declaration of estimated taxes shall be filed as follows:

(1) For tax years ending before January 1, 2106, on or before April 15 of each year or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the date the taxpayer first becomes subject to municipal income tax;

(2) For tax years beginning on or after January 1, 2016, on or before the date prescribed for the filing of municipal income tax returns under subsection (a) of Section 311-51 of this chapter or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month of the first (1<sup>st</sup>) taxable year after the taxpayer becomes subject to tax for the first time;

- (3) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month after the beginning of each fiscal year or period.

### **Section 311-35 – Methods for Estimating Taxes.**

A taxpayer shall have the option of determining its estimated municipal income tax on either of the following methods:

- (a) By basing the estimate on the preceding full year's municipal income tax liability, or by annualizing such tax liability if the preceding tax year was not for a full 12-month period. In such case, if each installment is timely paid when due on that basis, no interest or penalty shall apply for any under estimate of municipal income tax for the tax year, regardless of the actual municipal income tax liability for such year, except in the case where the annual return required by Section 311-51 and the payment required with that return by subsection (b) of Section 311-51 have not been submitted by the due dates for such annual return and the payment of municipal income tax due.
- (b) (i) For tax years prior to 2005, by basing the estimate on the taxable income earned or received during the three-month period preceding the due date for the declaration described in Section 311-33, annualized for the remainder of the tax year, and updating this estimate by amendment as necessary each succeeding three-month period so that at least seventy percent (70%) of the annual municipal income tax liability to be ultimately determined shall have been paid by estimate within one month following the close of the tax year, through timely quarterly installments. Failure to have made timely quarterly payments totaling at least seventy percent (70%) of the ultimate municipal income tax liability by estimate in the fashion so described shall subject the taxpayer to interest and penalties as set forth in Sections 311-73 and 311-75 on the portion of estimated municipal income tax due and not seventy percent (70%) paid by the installment due date.
- (ii) For tax years beginning in 2005 and thereafter, by basing the estimate on the taxable income earned or received during the three-month period preceding the due date for the declaration described in Section 311-33, annualized for the remainder of the tax year, and updating this estimate by amendment as necessary each succeeding three-month period so that at least ninety percent (90%) of the annual municipal income tax liability to be ultimately determined shall have been paid by estimate within one month following the close of the tax year, through timely quarterly installments. Failure to have made timely quarterly payments totaling at least ninety percent (90%) of the ultimate municipal income tax liability by estimate in the fashion so described shall subject the taxpayer to interest and penalties as set forth in Sections 311-73 and 311-75 on the portion of estimated municipal income tax due and not ninety percent (90%) paid by the installment due date.

- (c) Except as otherwise provided in this Section 311-35, the interest and penalty provisions of Sections 311-73 and 311-75 apply to the late payment, nonpayment or underpayment of estimated municipal income tax. However, the interest and penalty provisions of Sections 311-73 and 311-75 shall not apply where either:
  - (i) The taxpayer is a resident but was not domiciled in the Municipality on January 1 of the taxable year for which estimated payments of municipal income tax have been made; or
  - (ii) The taxpayer has remitted on a timely basis an amount of estimated municipal income tax at least equal to one hundred percent (100%) of the taxpayer's municipal income tax liability for the preceding taxable year, provided that the return for the preceding taxable year reflected a 12-month period and the taxpayer filed with the Municipality a municipal income tax return for the preceding taxable year.

**Section 311-37. – Payment with Declaration.**

- (a) For tax years prior to 2005, the required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or tax commissioner, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:
  - (i) Taxpayers who are individuals are required to submit a declaration of the estimated income tax to be paid the Municipality accompanied by a payment of at least seventeen and one-half percent (17.5%) of the estimated annual tax, less credit for taxes withheld or paid to another municipality or Joint Economic Development District. At least a similar amount shall be paid on or before the last day of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>), and thirteenth (13<sup>th</sup>) months after the beginning of the tax year.
  - (ii) For taxpayers that are not individuals, such declaration of estimated income tax to be paid the Municipality shall be accompanied by a payment of at least seventeen and one-half percent (17.5%) of the estimated annual tax. At least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) months after the beginning of the taxable year.
- (b) For tax years beginning on or after January 1, 2005 and continuing through December 31, 2015, the required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or tax commissioner, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:
  - (i) Taxpayers who are individuals are required to submit a declaration of the estimated income tax to be paid the Municipality accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax, less credit for taxes withheld or paid to another municipal corporation or Joint Economic Development District. At least a similar amount shall be paid on or

before the last day of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>), and thirteenth (13<sup>th</sup>) months after the beginning of the tax year.

- (ii) For Taxpayers that are not individuals, such declaration of estimated income tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax. At least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) months after the beginning of the taxable year.
- (c) For tax years beginning on or after January 1, 2016, the required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or tax commissioner, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be twenty-two and one-half percent (22.5%) of the estimated tax liability for the taxable year, less credits for taxes withheld or paid to another municipal corporation or Joint Economic Development District, with the declaration of income tax, and a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of each of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>), and twelfth (12<sup>th</sup>) months after the beginning of the taxable year.

The mere submission of a declaration estimating a municipal income tax liability shall not constitute a filing of the required declaration unless accompanied by the required payment.

#### **Section 311-39. – Amended Declarations.**

- (a) An amended declaration is required whenever the taxpayer's estimated tax liability changes during the taxable year. A change in estimated tax liability may either increase or decrease the estimated tax liability for the taxable year.
- (b) When an amended declaration is filed, the unpaid balance of municipal income tax shown due thereon shall be paid in equal installments on or before the remaining payment dates set forth in Section 311-37 of this chapter, and the amended declaration must be filed on the next applicable due date.

#### **Section 311-41. – Annual Return Required.**

On or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month of the calendar or fiscal year following that for which the declaration or amended declaration was filed, an annual municipal income tax return shall be filed and any balance of municipal income tax which may be due shall be paid with the return in accordance with the provisions of Section 311-51 of this chapter. A failure to file an annual municipal income return may result in interest and civil and/or criminal penalties pursuant to Sections 311-73, 311-75, and 311-999 of this chapter.

- (a) For taxpayers who are individuals, or who are not individuals and are reporting and filing on a calendar year basis, the annual tax return is due on the same date as the

filing of the federal tax return, unless extended pursuant to division (G) of section 5747.08 of the Revised Code.

- (b) For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the end of the taxable year or period.

The filing of a declaration does not relieve the taxpayer of the necessity of filing an annual return, even if there is no change in the declared tax liability. An annual return must be filed to obtain a refund of any overpayment of more than five dollars (\$5) for tax years beginning prior to January 1, 2016 or a refund of any overpayment of more than ten dollars (\$10) for tax years beginning on or after January 1, 2016.

### **Section 311-43. – Underpayment of Estimated Taxes.**

- (a) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Sections 311-73 and 311-75 of this chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in subsection (b) of this section. The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.
- (b) An underpayment of any portion of tax liability determined under subsection (a) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:
  - (i) The amount of estimated taxes that were paid equals at least ninety percent (90%) of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due;
  - (ii) The amount of estimated taxes that were paid equals at least one hundred percent (100%) of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve (12) months and the taxpayer filed a return with the municipal corporation under Section 311-51 of this chapter for that year; or
  - (iii) The taxpayer is an individual who resides in the Municipality but was not domiciled there on the first (1<sup>st</sup>) day of January of the calendar year that includes the first (1<sup>st</sup>) day of the taxable year.
- (c) Failure to remit estimated taxes may also be subject to criminal penalties as provided in Section 311-999 of this chapter.

### **Section 311-45. – Tax Credit for Job Creation or Retention in Ohio.**

The Municipality, by Ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer for the purpose of fostering job creation or job retention in the Municipality. If a credit is granted under this section, it shall be measured for the job creation credit as a percentage of the new income tax revenue the Municipality derives from new employees of the taxpayer or, in the case of job retention credits, as a percentage of the income tax revenue the Municipality derives from the retained employees of the taxpayer. Any such credit shall be for a term not exceeding fifteen (15) years. Before the Municipality passes an ordinance granting a credit, the Municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

### **Section 311-47. - Credit for Tax Paid to Another Municipality/Joint Economic Development District.**

#### *(a) Residents.*

- (i) When a resident is subject to and has paid, or has acknowledged liability for, a municipal income tax in another taxing municipality or Joint Economic Development Zone or District on the same income taxable under this chapter, regardless of whether such other taxing municipality or Joint Economic Development Zone or District allows credit to its nonresidents, such resident may claim a credit against the tax imposed by this chapter in an amount equal to the lesser of the amount of such tax paid to such other taxing municipality or Joint Economic Development Zone or District, or the municipal income tax imposed by this chapter on such income. In no case shall the credit exceed the tax assessed under this chapter on the resident's taxable income that is also subject to tax in another taxing municipality or Joint Economic Development Zone or District.
- (ii) A resident owner of a pass-through entity that does not conduct business in the Municipality and that has paid, or has acknowledged liability for, an income tax in another taxing municipality or Joint Economic Development Zone or District may claim a credit equal to the lesser of the following amounts:
  - (1) The resident owner's proportionate share of the amount, if any, of income tax paid by the pass-through entity to another taxing municipality or Joint Economic Development Zone or District in the State; or
  - (2) The resident owner's proportionate share of the amount of municipal income tax that would be imposed on the pass-through entity if the pass-through entity conducted business in the Municipality.

In no case shall the credit authorized by this Section 311-47(ii) exceed the municipal income tax assessed by the Municipality under this chapter on the

taxable income that is also subject to tax in another taxing municipality or Joint Economic Development Zone or District.

- (iii) Where applicable, the credits provided by Ohio Revised Code sections 718.021 and 718.121 shall be available to residents, and the credit provided by Section 311-29 shall be available to resident owners.
- (b) *Nonresidents.* Except as provided in Ohio Revised Code sections 718.021 and 718.121 and Section 311-29, when a nonresident is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipal corporation in which the nonresident resides, such nonresident shall not be allowed any credit against or claim of refund for municipal income tax paid to the other municipality, and the Municipality will not acknowledge or allow any claim for refund of any portion of the municipal income tax so levied.
- (c) *Claim for Credit.* The credits provided for in this Section 311-47 will not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with, the tax commissioner. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this chapter, together with such interest and penalties, both civil and criminal, as prescribed in this chapter.
- (d) No credit shall be given to any taxpayer for any school district income tax.

**Section 311-49. – Credit for Tax Beyond Statute for Obtaining Refund.**

- (a) Income tax that has been deposited or paid to the Municipality, but should have been deposited or paid to another municipal corporation, is allowable by the Municipality as a refund, but is subject to the three-year limitation on refunds as provided in Section 311-71 of this chapter.
- (b) Income tax that should have been deposited or paid to the Municipality, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the Municipality. To the extent a refund of such tax or withholding is barred by the limitation on refunds as provided in Section 311-71, the Municipality will allow a non-refundable credit equal to the tax or withholding paid to the other municipality against the municipal income tax the Municipality claims is due. If the Municipality's tax rate is higher, the tax representing the net difference of the tax rates is also subject to collection by the Municipality, along with any penalty and interest accruing during the period of nonpayment.
- (c) No carryforward of credit will be permitted when the overpayment is beyond the three-year limitation for refunding of same as provided in Section 311-71 of this chapter.



- (d) Nothing in this section requires the Municipality to allow credit for tax paid to another municipal corporation if the Municipality has reduced credit for tax paid to another municipal corporation. Section 311-47 of this chapter regarding any limitation on credit shall prevail.

**Section 311-51 – Returns Must Be Filed; Time of Filing; Payment with Return.**

- (a) (i) Except as otherwise provided in this chapter, each individual taxpayer who engages in business or other activity in the Municipality, or whose taxable income is subject to the tax imposed by this chapter, shall, whether or not a tax be due thereon, make and file a return with the tax commissioner on or before April 15 of each year following the close of the calendar year. Each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the end of the taxpayer's fiscal year or period. A failure to file an annual municipal income return and to remit the taxes due therewith, made payable to the Municipality or the tax commissioner, may result in interest and civil penalties pursuant to Sections 311-73 and 311-75 of this chapter.
- (ii) The tax commissioner shall accept on behalf of all nonresident and resident individual taxpayers a return filed by an employer, agent of an employer, or other payer located in the Municipality under subsection (b)(vi) of Section 311-23 of this chapter when the nonresident or resident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the Municipality.
- (iii) For tax years beginning prior to January 1, 2016, the tax commissioner is hereby authorized to provide by regulation that the municipal income withholding tax return described in Section 311-29 of a pass-through entity that conducts business in the Municipality, showing the amount of municipal income tax withheld and remitted to the tax commissioner by said pass-through entity in respect of an owner's distributive share of the pass-through entity's net profit attributable to the Municipality, shall be accepted as the municipal income tax return required of such owner whose sole income subject to tax under this chapter is such distributive share. Where an owner has as his sole sources of income subject to tax under this chapter both qualifying wages described in this section and the distributive share of net profit described in this section, the tax commissioner is hereby authorized to accept as the municipal income tax return required of such owner the returns described in this section of the employer and the pass-through entity.
- (b) The taxpayer making a municipal income tax return shall, at the time of filing thereof, pay to the tax commissioner the amounts of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source, pursuant to the provisions of Sections 311-23 through 311-31, or where any

portion of said tax shall have been paid by the taxpayer, pursuant to the provisions of Sections 311-33 through 311-37, or where an income tax, creditable against municipal income tax pursuant to Section 311-47, has been paid to another municipality or Joint Economic Development Zone or District, credit for the amount so paid shall be deducted from the amount of municipal income tax shown to be due and only the balance, if any, shall be due and payable at the time of filing said return. As provided in Ohio Revised Code section 718.051, for taxable years beginning on or after January 1, 2005, a business the net profits of which are subject to tax under this chapter may pay its municipal income tax by using the Ohio Business Gateway.

- (i) For taxable years beginning on or after January 1, 2016, the taxpayer shall not be required to remit tax with respect to net profits if the amount due is ten dollars (\$10) or less.
- (ii) Any taxpayer not required to remit tax to the Municipality for a taxable year pursuant to subsection (b)(i) of this section shall file with the Municipality an annual net profit return under subsection (a) of this section.
- (c) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.
- (d) If an individual is unable to complete and file a return or notice required by the Municipality in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the duly authorized agent, guardian, conservator, fiduciary, or other person.
- (e) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the fiduciary.
- (f) Spouses may file either separate returns or a joint return for municipal income tax purposes, even though one of the spouses has neither taxable income nor deductions included on the municipal income tax return, regardless of whether their federal and state returns were filed separately or jointly. If a joint municipal income tax return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

**Section 311-53. – Exception to Filing Requirement; Affidavit.**

- (a) As used in this section, “worksite location” has the same meaning as in Section 311-27 of this chapter.
- (b) A person may notify the tax commissioner that the person does not expect to be a taxpayer with respect to the Municipality for a taxable year if both of the following conditions apply:
  - (i) The person was required to file a tax return with the Municipality for the immediately preceding taxable year because the person performed services at a worksite location within the Municipality, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter; and
  - (ii) The person no longer provides services in the Municipality, and does not expect to be subject to the Municipality’s income tax for the taxable year.
- (c) The person shall provide the notice in a signed affidavit that briefly explains the person’s circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the Municipality. The affidavit also shall include the following statement: “The affiant has no plans to perform any services within the City of Cincinnati, make any sales in the City of Cincinnati, or otherwise become subject to the tax levied by the City of Cincinnati during the taxable year. If the affiant does become subject to the tax levied by the municipal corporation for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the City of Cincinnati, if such a registration is required by the City of Cincinnati’s resolutions, ordinances, or rules.” The person shall sign the affidavit under penalty of perjury.
- (d) The tax commissioner is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.
- (e) If a person submits an affidavit described in subsection (c) of this section, the tax commissioner shall not require the person to file any tax return for the taxable year unless the tax commissioner possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made, or other activity that results in municipal taxable income reportable to the Municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the tax commissioner for the taxable year. Nothing in this Section 311-53 prohibits the tax commissioner from performing an audit of the person.

**Section 311-55. – Extension of Time for Filing.**

- (a) (i) For tax years beginning prior to January 1, 2016, a request for extension for filing the municipal income tax return shall be filed no later than the original due date for filing such return, as set forth in Section 311-51 of this chapter. The extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has

been extended. The taxpayer shall make the request by filing either a copy of the taxpayer's request for a federal filing extension or a written request with the tax commissioner.

- (ii) (1) For tax years beginning on or after January 1, 2016, any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth (15<sup>th</sup>) day of the tenth (10<sup>th</sup>) month after the last day of the taxable year to which the return relates.
  - (2) Any taxpayer that qualifies for an automatic federal extension for a period other than six (6) months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.
  - (3) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the tax commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the tax commissioner on or before the date the municipal income tax return is due, the tax commissioner shall grant the taxpayer's requested extension.
- (b) Notwithstanding subsections (a)(i) and (a)(ii) above, on and after January 1, 2005, any taxpayer that is subject to municipal income tax on the taxpayer's net profit and that has received an extension to file the federal income tax return for the same tax year shall not be required to notify the Municipality of the federal extension and shall not be required to file the municipal income tax return for such tax year until the last day of the month to which the due date for filing the federal income tax return has been extended; provided that, on or before the due date specified in Section 311-51 for filing the municipal income tax return, the taxpayer notifies the Ohio tax commissioner of the federal extension through the Ohio business gateway.
  - (c) The Municipality may deny a taxpayer's request for extension if the taxpayer fails to timely file a request, including the failure to file a copy of the federal extension request, if applicable.
  - (d) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the tax commissioner grants an extension of that date; hence, interest may apply to any unpaid tax during the period of the extension at the rate set forth in Sections 311-73 and 311-75. No penalty shall be assessed in those cases where the return is filed and the final tax paid within the extension period, provided all other filing and payment requirements have been fulfilled. However, if upon further examination, it becomes evident that declaration, filing or payment requirements have not been fulfilled, penalty and interest may be assessed in full in the same manner as though no extension for the filing of the municipal income tax return had been granted.

- (e) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of section 5747.08 of the Ohio Revised Code, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.
- (f) In the event the United States of America, the State of Ohio, Hamilton County or the Municipality has declared any part of the Municipality a disaster area, the tax commissioner may extend the time for filing of the annual return for a period not to exceed six (6) months for persons who have suffered injury or loss from the disaster. The city manager or city manager's designee shall establish guidelines for determining eligibility for and implementation of such extension. In the event an extension is granted, both penalty and interest shall be waived during the time of the extension.

**Section 311-57. – Return and Payment of Tax; Individuals Serving in Combat Zone.**

- (a) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the tax commissioner of the Municipality for both an extension of time for filing of the return and an extension of time for payment of taxes required by the Municipality in accordance with this chapter during the period of the member's or civilian's duty service and for one hundred eighty (180) days thereafter. The application shall be filed on or before the one hundred eightieth (180<sup>th</sup>) day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the tax commissioner considers necessary to demonstrate eligibility for the extension. The contract for installment payments, if any; the date(s) by which returns, reports, other tax documents or payments must be made; and the applicability of penalties or interest on any unpaid taxes shall be as provided in Section 718.052 of the Ohio Revised Code and the rules and regulations promulgated under this chapter.
- (b) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the Municipality in accordance with Section 718.052 of the Ohio Revised Code and the rules and regulations promulgated under this chapter.

**Section 311-59. – Consolidated Returns.**

- (a) As used in this section:
  - (i) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall

not include any incumbent local exchange carrier that would otherwise be included in the group.

- (ii) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.
  - (iii) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under subsection (a)(i) of this section.
  - (iv) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.
  - (v) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.
- (b) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year and if one of the following applies:
- (i) For tax years beginning prior to January 1, 2016, all of the members of the affiliated group of corporations are subject to the municipal income tax in that taxable year; or
  - (ii) For tax years beginning on or after January 1, 2016, at least one member of the affiliated group of corporations is subject to the municipal income tax in that taxable year.
- (c) For tax years beginning prior to January 1, 2016:
- (i) An affiliated group of corporations subject to the tax imposed by this chapter that properly files a consolidated return in accordance with subsection (b)(i) of this section must file a consolidated return that includes those corporations in the group that are subject to municipal income tax for each succeeding taxable year in which the group files a consolidated return for federal income tax purposes unless, on or before the due date (taking into account extensions of time properly granted) of the return for a taxable year, the affiliated group obtains the permission of the tax commissioner to cease filing a consolidated return for that year;

- (ii) A consolidated return shall include information to disclose the net profit or loss of each corporate member of the group before consolidation;
  - (iii) Profits and losses are combined after the schedules are separately applied to each respective corporation in the affiliated group;
  - (iv) Losses incurred by a corporation prior to the period of the consolidation year may be carried forward to the period of consolidation and applied against the allocated profit or loss of the same corporation, but such loss may not be used to reduce the income of other corporate members of the consolidated filing;
  - (v) If the tax commissioner finds net profits are not properly allocated to the Municipality for any reason, the filing of separate returns or other adjustments may be required by the tax commissioner as may be necessary to produce a fair and proper allocation;
  - (vi) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the Municipality constituting only a portion of its total business, the tax commissioner shall require such additional information as the tax commissioner deems necessary to ascertain whether net profits are properly allocated to the Municipality. If the tax commissioner finds the net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with a division, branch, factory, office, laboratory or activity, or by some other method, the tax commissioner shall make such adjustments to, and allocation of, net profits to fairly and reasonably reflect the proper allocation of net profits to the Municipality.
- (d) For tax years beginning on or after January 1, 2016:
- (i) An election made pursuant to subsection (b)(ii) of this section is binding for a five-year period beginning with the first (1<sup>st</sup>) taxable year of the initial election unless a change in the reporting method is required under federal law;
    - (1) The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under subsection (d)(i)(2) of this section or the taxpayer receives permission from the tax commissioner. The tax commissioner shall approve such a request for good cause shown;
    - (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first (1<sup>st</sup>) year following the last year of a five-year consolidated municipal income tax return election period in effect

under subsection (d)(i)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first (1<sup>st</sup>) taxable year of the election;

- (ii) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code return for a taxable year shall file a consolidated municipal income tax return for that taxable year if the tax commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the Municipality. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal income tax return in all subsequent taxable years unless the taxpayer requests and receives written permission from the tax commissioner to file a separate return or a taxpayer has experienced a change in circumstances;
- (iii) (1) Except as otherwise provided in subsections (d)(iii)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 311-9-A1 of this chapter, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division;
- (2) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under Section 311-9-A1 of this chapter to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income;
- (3) If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated municipal income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
  - (A) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 311-13 of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the



entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group;

- (B) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 311-13 of this chapter, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group;

- (4) If the net profit or loss of a pass-through entity having less than eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

- (A) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in Section 311-13 of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation; and

- (B) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group;

- (iv) A taxpayer shall prepare a consolidated municipal income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

- (e) An election made under subsections (b)(i), (b)(ii) or (d)(i)(2) of this Section 311-59 is binding on all members of the affiliated group of corporations subject to a municipal income tax.
- (f) Corporations filing a consolidated municipal income tax return shall make the computations required under Section 311-13 of this chapter by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever

"net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

- (g) Each corporation filing a consolidated municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by a municipal corporation in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.
- (h) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before January 1, 2016, to file a consolidated or combined tax return with such municipal corporation may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

#### **Section 311-61. – Determination of Timely Filing and Payment.**

This section shall not apply to payments required to be made under subsections (b)(ii) or (b)(iii) of Section 311-23 of this chapter.

- (a) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period to the tax commissioner or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment. "The date of postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.
- (b) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the tax commissioner for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this section, "submitted the payment" means the date which the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer.

#### **Section 311-63. - Forms for Filing; Documents Required.**

- (a) The municipal income tax return shall be filed with the tax commissioner on a form or forms available to the public through the Internet or furnished by or obtainable upon request from the tax commissioner or on a generic form, if the generic form contains all information required by ordinances, resolutions, or rules adopted by the Municipality or the tax commissioner to be submitted with the prescribed municipal income tax return and if the taxpayer or return preparer filing the generic form otherwise complies with the requirements of this chapter governing the filing of

returns, reports or documents. Such required information includes: taxpayer identification number; specification of municipal income tax year involved; and if a federal form is used, a statement that indicates the municipal income tax purpose for which the federal form is intended as a substitute, such as power of attorney, extension of time in which to file, and the like. The municipal income tax return shall set forth:

- (i) The aggregate amounts of qualifying wages and other taxable income earned or received during the preceding year and subject to municipal income tax, and gross income from any business, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to said tax;
  - (ii) The amount of the tax imposed by this chapter on such taxable income; and
  - (iii) Such other pertinent statements, information returns, copies of federal or state tax returns or schedules, or other information as the tax commissioner may require, including a statement that the figures used in the municipal income tax return are the figures used in the return for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter.
- (b) Each return required to be filed under this section shall be verified by a declaration under penalty of perjury and shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. A facsimile of any required signature shall be accepted in lieu of a manual signature.
- (c) Each returned required to be filed under this section shall include all supporting documents identified in the rules and regulations promulgated under this chapter and as set forth in section 718.05 of the Ohio Revised Code or which will enable the tax commissioner to verify credits, income, losses, or other pertinent factors on the return. After a taxpayer files a tax return, the tax commissioner shall request, and the taxpayer shall provide, any information, statements, or documents required by the Municipality to determine and verify the taxpayer's municipal income tax liability.
- (d) An incomplete return shall be considered not filed, and the taxpayer shall be subject to late fees and penalties unless a complete return is filed by the date such return is due.
- (e) If the tax commissioner considers it necessary in order to ensure the payment of the tax imposed by the Municipality in accordance with this chapter, the tax commissioner may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.
- (f) With respect to taxpayers to whom Section 311-59 of this chapter applies, to the extent that any provision in this division conflicts with any provision in Section 311-59 of this chapter, the provision in Section 311-59 shall prevail.

### **Section 311-65. - Requiring Identifying Information.**

- (a) The tax commissioner may require any person filing a tax document with the tax commissioner to provide identifying information, which may include the person's social security number, federal employer identification number, or other identification number requested by the tax commissioner. A person required by the tax commissioner to provide identifying information that has experienced any change with respect to that information shall notify the tax commissioner of the change before, or upon, filing the next tax document requiring the identifying information.
- (b)
  - (i) If the tax commissioner makes a request for identifying information and the tax commissioner does not receive valid identifying information within thirty (30) days of making the request, the tax commissioner may impose a penalty upon the person to whom the request was directed pursuant to Sections 311-73 and 311-75 of this chapter, in addition to any applicable penalty described in Section 311-999 of this chapter.
  - (ii) If a person required by the tax commissioner to provide identifying information does not notify the tax commissioner of a change with respect to that information as required under subsection (a) of this section within thirty (30) days after filing the next tax document requiring such identifying information, the tax commissioner may impose a penalty pursuant to Sections 311-73 and 311-75 of this chapter.
  - (iii) The penalties provided for under subsections (b)(i) and (ii) of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 311-999 of this chapter for a violation of Section 311-91 of this chapter and any other penalties that may be imposed by the tax commissioner by law.

### **Section 311-67. – Use of Ohio Business Gateway; Types of Filings Authorized.**

- (a) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file any municipal income tax return or, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.
- (b) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
- (c) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.
- (d) The use of the Ohio Business Gateway by municipal corporations, taxpayers, or other persons does not affect the legal rights of municipalities or taxpayers as otherwise

permitted by law. The State of Ohio shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.

- (e) Nothing in this section shall be construed as limiting or removing the authority of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

**Section 311-69. – Amended Returns; Effect of Federal or State Tax Determination.**

- (a) (i) A taxpayer shall file an amended return with the tax commissioner in such form as the tax commissioner requires if any of the facts, figures, computations, or attachments required in the taxpayer's annual return to determine the tax due levied by the Municipality in accordance with this chapter must be altered.
- (ii) (1) For tax years beginning prior to January 1, 2016, within three (3) months after the final determination of any federal tax liability affecting the taxpayer's municipal income tax liability, such taxpayer shall make and file an amended municipal income tax return showing taxable income subject to the municipal income tax based upon such final determination of federal tax liability, and such taxpayer shall pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment.
- (2) For tax years beginning on or after January 1, 2016, within sixty (60) days after the final determination of any federal or state tax liability affecting the taxpayer's municipal income tax liability, such taxpayer shall make and file an amended municipal income tax return showing taxable income subject to the municipal income tax based upon such final determination of federal or state tax liability, and such taxpayer shall pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is ten dollars (\$10) or less.
- (iii) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the tax commissioner before filing the amended return.
- (b) (i) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If, for tax years beginning before January 1, 2016 the combined tax shown to be due is five dollars (\$5) or less, or for tax years beginning on or after January 1, 2016 the combined tax shown to be due is ten dollars (\$10) or less, such amount need not accompany the amended return. Except as provided under subsection (b)(ii) of this section, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless the applicable statute of limitations for civil actions or prosecutions under Section 311-99 or subsection (h) of Section

311-999, respectively, has not expired for a previously filed return.

- (ii) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened.
- (c) (i) In the case of an overpayment resulting from adjustments to the taxpayer's federal or state income tax return, a request for refund may be filed under this division within the period prescribed by Section 311-69 of this chapter for filing the amended return even if it is filed beyond the period prescribed in subsection (e) of section 311-99 if it otherwise conforms to the requirements of that subsection. If, for tax years beginning before January 1, 2016, the amount of the refund is five dollars (\$5) or less, or for tax years beginning on or after January 1, 2016 the amount of the refund is ten dollars (\$10) or less, no refund need be paid by the Municipality to the taxpayer. Except as set forth in subsection (c)(ii) of this section, a request filed under this subsection shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless it is also filed within the time prescribed in Section 311-71 of this chapter. Except as set forth in subsection (c)(ii) of this section, the request shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return.
- (ii) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened.

#### **Section 311-71. - Overpayments; Refunds.**

- (a) (i) A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder. In such case, the overpayment is considered to be an estimated tax payment made as of the date of the postmark, as defined in Section 311-33(b)(iii)(2) of this chapter, stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted.
- (ii) Alternatively, upon receipt of a request for a refund, the tax commissioner, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, the taxpayer's assigns, or legal representative with respect to any income or withholding tax levied by the Municipality, overpayments or amounts paid erroneously if the refund requested is more than five dollars (\$5) for tax years beginning prior to January 1, 2016 or more than ten dollars (\$10) for tax years beginning on or after January 1, 2016.
- (b) (i) Except as otherwise provided in this chapter, municipal income taxes erroneously paid shall not be refunded unless a claim for refund is made within within the later of three (3) years from the date on which such payment was made or the municipal income tax return was due; or

- (1) For tax years beginning prior to January 1, 2016, three (3) months after final determination of the taxpayer's federal income tax liability; or
  - (2) For tax years beginning on or after January 1, 2016, within sixty (60) days after the final determination of any federal or state tax liability affecting the taxpayer's municipal tax liability;
- (ii) Any documentation that substantiates the taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and/or disallowance of undocumented credits or losses.
  - (iii) A request for a refund that is received after the last day for filing specified in subsection (b)(i) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:
    - (1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request;
    - (2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven (7) days of such last day; or
    - (3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven (7) days of the last day for making the request.
- (c) (i) On filing of the refund request, the tax commissioner shall determine the amount of refund due and request certify such amount to the treasurer of the Municipality for payment. Except as provided in subsection (c)(ii) of this section, the tax commissioner shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.
  - (ii) If the tax commissioner denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the tax commissioner shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 311-97 of this chapter.
- (d) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal

income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rates described in Sections 311-73 and 311-75 of this chapter.

- (e) As used in this section, “withholding tax” has the same meaning as in Section 311-75 of this chapter.

**Section 311-73. - Interest, Fees, Charges and Civil Penalties for Tax Years Beginning Prior to January 1, 2016.**

- (a) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear simple interest at the rate prescribed annually by the tax commissioner of the State of Ohio in accordance with the formula set forth in Section 5703.47 of the Ohio Revised Code. The interest rate(s) charged shall be the interest rate(s) in effect at the time(s) the delinquent taxes were due.
- (b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid municipal income tax are hereby imposed as follows:
- (i) For failure to pay taxes due, other than taxes withheld: One and one-half percent (1.5%) per month or fraction thereof that the amount remains past due.
  - (ii) For failure to remit taxes withheld from employees pursuant to Section 311-23 and owners of pass-through entities pursuant to Section 311-29: Five percent (5%) per month or fraction thereof that the amount remains past due.
  - (iii) For failure to make and file a return with the tax commissioner pursuant to Sections 311-23, 311-41, 311-51, or 311-99: Fifty dollars (\$50) per return.
- (c) In addition to interest as provided in subsection (a) hereof and penalties as provided in subsection (b) hereof, a penalty of one-half percent (0.5%) of the municipal income tax required to be withheld and remitted by an employer may be imposed on employers who are required to remit payment of withholding taxes electronically and who fail to do so.
- (d) *Exceptions.* A penalty shall not be assessed on an additional tax assessment made by the tax commissioner when the municipal income tax return has been filed in good faith and the tax paid thereon within the time prescribed by the tax commissioner; and provided further that in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a



federal audit providing an amended municipal income tax return is filed and the additional tax is paid within three (3) months after the final determination of the federal tax liability.

- (e) Upon recommendation of the tax commissioner, the director of finance may abate penalty or interest, or both, under uniform guidelines adopted by the board of review.

**Section 311-75. - Interest, Fees, Charges and Civil Penalties for Tax Years Beginning on or After January 1, 2016.**

(a) As used in this section:

- (i) "Applicable law" means this chapter and the ordinances, codes, directives, instructions, rules and regulations adopted by the Municipality regarding municipal income tax.
- (ii) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three (3) years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.
- (iv) "Income tax," "estimated income tax," and "withholding tax" mean any income tax, estimated income tax, and withholding tax imposed by the Municipality pursuant to applicable law, including at any time before January 1, 2016.
- (iv) "Interest rate as described in subsection (a) of this section" means the federal short-term rate, rounded to the nearest whole number percent, plus five percent (5%). The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with subsection (a)(ii) of this section.
- (v) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with the tax commissioner by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.
- (vi) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.
- (vii) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.
- (viii) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.
- (ix) "Withholding tax" includes amounts an employer, any agent of an employer, or

any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(b) (i) This section shall apply to the following:

(1) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016; and

(2) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Municipality on or after January 1, 2016 for taxable years beginning on or after January 1, 2016.

(ii) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the provisions of Section 311-73 of this chapter.

(c) A taxpayer, employer, any agent of the employer, and any other payer who fails for any reason, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax due to the Municipality or to file timely with the Municipality any return required to be filed shall pay be liable for interest and penalties as set forth in this section..

(i) Interest shall be imposed at the rate defined as “interest rate as described in subsection (a) of this section,” per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.

(ii) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent (15%) of the amount not timely paid shall be imposed.

(iii) With respect to any unpaid withholding tax, a penalty equal to fifty percent (50%) of the amount not timely paid shall be imposed.

(iv) With respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of twenty-five dollars (\$25) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars (\$150) in assessed penalty for each failure to timely file a return.

(d) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not do either of the following:

(i) Impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section; or

- (ii) Refund or credit any penalty, amount of interest, charges, or additional fees that were properly imposed or collected before January 1, 2016.
- (e) The tax commissioner may, in the tax commissioner's sole discretion, abate or partially abate penalties or interest imposed under this section when the tax commissioner deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.
- (f) The Municipality's post-judgment collection costs and fees, including attorney's fees, are imposed on and shall be collectible from the taxpayer, employer, any agent of the employer, or any other payer.

**Section 311-77. - Rounding.**

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents (\$0.50) shall be dropped, rounding down to the nearest whole dollar. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

**Section 311-79. – Audit.**

- (a) At or before the commencement of an audit, as defined in Section 311-9-A3 of this chapter, the tax commissioner shall provide to the taxpayer a written description of the roles of the tax commissioner and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of tax. At or before the commencement of an audit, the tax commissioner shall inform the taxpayer when the audit is considered to have commenced.
- (b) Except in cases involving suspected criminal activity, the tax commissioner shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.
- (c) At all stages of an audit by the tax commissioner, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner, and the taxpayer may designate, on a form prescribed by the tax commissioner, such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the tax commissioner. If a taxpayer has not submitted such a form, the tax commissioner may accept other evidence, as the tax commissioner considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

- (d) A taxpayer may record, electronically or otherwise, the audit examination.
- (e) The failure of the tax commissioner to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.
- (g) If the tax commissioner fails to substantially comply with the provisions of this section, the tax commissioner, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit.

#### **Section 311-81. - Duty of Taxpayer to Retain Records.**

Every taxpayer shall retain all records necessary to compute municipal income tax liability for the following periods unless the tax commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer:

- (a) For tax years beginning before January 1, 2016, for a period of three (3) years from the date the annual municipal income tax return is filed, or the municipal income taxes required to be withheld are paid; or
- (b) For tax years beginning on or after January 1, 2016, for a period of six (6) years following the end of the taxable year to which the records or documents relate.

#### **Section 311-83. - Compromise of Claim and Payment Over Time.**

- (a) As used in this section, "claim" means a claim for an amount payable to the Municipality that arises pursuant to the municipal income tax imposed in accordance with this chapter.
- (b) For municipal income tax liability associated with any tax year beginning prior to January 1, 2016, subject to the consent of the local board of review or pursuant to regulation approved by the city manager, the tax commissioner shall have the power to compromise any liability imposed by this chapter. Rules and regulations adopted by the tax commissioner and approved by the city manager prior to the effective date of any amendment of this chapter shall remain in full force and effect, unless modified in the manner set forth in this section, to the extent that such rules and regulations do not conflict with this chapter, as amended.
- (c) For municipal income tax liability associated with any tax year beginning on or after January 1, 2016, the tax commissioner may do either of the following if such action is in the best interests of the Municipality:

- (i) Compromise a claim; or
  - (ii) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments, upon such terms and conditions as the tax commissioner may require.
- (d) The tax commissioner's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.
- (e) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall inure to the benefit of only the parties to the compromise or agreement, and shall not extinguish or otherwise affect the liability of any other person.
- (f) (i) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.
- (ii) The tax commissioner shall have sole discretion to determine whether or not penalty, interest, charges or applicable fees will be assessed through the duration of any compromise or payment-over-time agreement.
- (g) The tax commissioner may require that the taxpayer provide detailed financial documentation and information, in order to determine whether or not a payment-over-time agreement will be authorized. The taxpayer's failure to provide the necessary and required information by the tax commissioner shall preclude consideration of a payment-over-time agreement.

**Section 311-85. - Duties of Tax Commissioner; Collection; Enforcement; Tax Determination.**

- (a) It shall be the duty of the tax commissioner to collect and receive the tax imposed by this chapter in the manner prescribed herein, and to keep an accurate record thereof, and to report all monies received.
- (b) It shall be the duty of the tax commissioner to enforce payment of income taxes owing the Municipality, to keep accurate records, for a minimum of five (5) years, showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof. As provided in Ohio Revised Code section 718.01(A)(1), nothing in Ohio Revised Code chapter 718 shall be construed as limiting or removing the

ability of the Municipality to administer, audit and enforce the provisions of this chapter.

- (c) The tax commissioner is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the city manager, to adopt and promulgate and to enforce rules and regulations authorized or required by this chapter relating to any matter or thing pertaining to the collection and payments of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.
- (d) Not less than ten (10) days before the approval by the city manager of any rule or regulation recommended for adoption and promulgation by the tax commissioner, a public hearing shall be held by the city manager or one designated by the city manager. Notice of the time and place of the public hearing and the text of the proposed rule or regulation shall be published in the City Bulletin for two (2) consecutive weeks within the thirty-day period immediately preceding the public hearing. The city manager, after having conducted or reviewed the substance of the public hearing, shall approve, disapprove or modify the proposed rule or regulation. The rule or regulation shall be promulgated by publication in the City Bulletin within thirty (30) days after its approval by the city manager.
- (e) In any case where a taxpayer has failed to file a return or has filed a return that does not show the proper amount of municipal income tax due, the tax commissioner may determine the amount of tax appearing to be due the Municipality from the taxpayer and issue an assessment to such taxpayer, as provided in Section 311-95, showing the amount of tax so determined, together with interest and penalties thereon, if any.

**Section 311-87. - Investigative Powers of Tax Commissioner; Right to Examine.**

- (a) The tax commissioner, or any authorized agent or employee of the tax commissioner, is authorized to examine the books, papers, records and federal and state income tax returns of any employer, taxpayer, or any other person subject to, or that the tax commissioner believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was filed, to ascertain the tax or withholdings due under this chapter. Every such employer, supposed employer, taxpayer, supposed taxpayer, or other person subject to this section, is hereby directed and required to furnish, upon written request of the tax commissioner or duly authorized agent or employee thereof, the opportunity for making such examinations and investigations as are hereby authorized at a reasonable time and place designated in the request.
- (b) The records and other documents of any taxpayer, employer, or other person that is subject to, or that the tax commissioner believes is subject to, the provisions of this chapter shall be open to the tax commissioner's inspection during business hours and shall be preserved for a period of six (6) years following the end of the taxable year to which the records or documents relate, unless the tax commissioner, in writing,

consents to their destruction within that period, or by order requires that they be kept longer. The tax commissioner may require any person, by notice served on that person, to keep such records as the tax commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the Municipality or for the withholding of such tax.

- (c) The tax commissioner is hereby authorized to order any person that the tax commissioner reasonably believes has knowledge of the facts, whether as a party or witness, to appear at the office of the tax commissioner to examine such person, under oath, concerning any income which was or should have been returned for municipal income taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel any such person to attend a hearing or examination and to produce any books, papers, records and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.
- (d) No person issued written notice by the tax commissioner compelling attendance at a hearing or examination or the production of books, papers, records, or federal and state income tax returns under this section shall fail to comply.

#### **Section 311-89. - Administrative Powers of the Tax Commissioner.**

The tax commissioner has the authority to perform all duties and functions necessary and appropriate to implement the provisions of this chapter, including without limitation:

- (a) Exercise all powers of an inquisitorial nature as provided by law, including, in addition to the powers set forth in Section 311-87 of this chapter, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths; provided that the powers set forth in this subsection (a) shall be exercised by the tax commissioner only in connection with the performance of the tax commissioner's duties under this chapter;
- (b) Appoint agents and prescribe their powers and duties;
- (c) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;
- (d) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, illegally or erroneously imposed or collected, or for any other reason overpaid;
- (e) Make all tax findings, determinations, computations, assessments and orders the tax

commissioner is by law authorized and required to make and, pursuant to time limitations provided by law, on the tax commissioner's own motion, review, redetermine, or correct any tax findings, determinations, computations, assessments or orders the tax commissioner has made, but the tax commissioner shall not review, redetermine, or correct any tax finding, determination, computation, assessment or order which the tax commissioner has made for which an appeal has been filed with the local board of review or other appropriate tribunal, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

- (f) Destroy any or all returns or other tax documents in the manner authorized by law;
- (g) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 311-23 of this chapter; and
- (h) Exercise the authority provided by law to take any action necessary to fulfill the responsibilities and duties of the tax commissioner under this chapter.

#### **Section 311-91. - Fraud.**

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by municipal corporation ordinance or state law to be filed with the tax commissioner, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the Municipality or the tax commissioner.

#### **Section 311-93. - Opinion of the Tax Commissioner.**

- (a) An "opinion of the tax commissioner" means an opinion issued under this section with respect to prospective municipal income tax liability. It does not include ordinary correspondence of the tax commissioner.
- (b) A taxpayer may submit a written request for an opinion of the tax commissioner as to whether or how certain income, source of income, or a certain activity or transaction will be taxed. The written response of the tax commissioner shall be an "opinion of the tax commissioner" and shall bind the tax commissioner, in accordance with subsections (c) and (g) of this section, provided all of the following conditions are satisfied:
  - (i) The taxpayer's request fully and accurately describes the specific facts or circumstances relevant to a determination of the taxability of the income, source of income, activity, or transaction, and, if an activity or transaction, all parties involved in the activity or transaction are clearly identified by name, location, or other pertinent facts;



- (ii) The request relates to a tax imposed by the Municipality in accordance with this chapter; and
  - (iii) The tax commissioner's response is signed by the tax commissioner and designated as an "opinion of the tax commissioner."
- (c) An opinion of the tax commissioner shall remain in effect and shall protect the taxpayer for whom the opinion was prepared and who reasonably relies on it from liability for any taxes, penalty, or interest otherwise chargeable on the activity or transaction specifically held by the tax commissioner's opinion to be taxable in a particular manner or not to be subject to taxation for any taxable years that may be specified in the opinion, or until the earliest of the following dates:
  - (i) The effective date of a written revocation by the tax commissioner sent to the taxpayer by certified mail, return receipt requested. The effective date of the revocation shall be the taxpayer's date of receipt or one year after the issuance of the opinion, whichever is later;
  - (ii) The effective date of any amendment or enactment of a relevant section of the Ohio Revised Code, uncodified state law, or the Municipality's income tax ordinance that would substantially change the analysis and conclusion of the opinion of the tax commissioner;
  - (iii) The date on which a court issues an opinion establishing or changing relevant case law with respect to the Ohio Revised Code, uncodified state law, or the Municipality's income tax ordinance;
  - (iv) If the opinion of the tax commissioner was based on the interpretation of federal law, the effective date of any change in the relevant federal statutes or regulations, or the date on which a court issues an opinion establishing or changing relevant case law with respect to federal statutes or regulations;
  - (v) The effective date of any change in the taxpayer's material facts or circumstances; or
  - (vi) The effective date of the expiration of the opinion, if specified in the opinion.
- (d)
  - (i) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.
  - (ii) If the taxpayer knowingly has misrepresented the pertinent facts or omitted material facts with intent to defraud the Municipality in order to obtain a more favorable opinion, the taxpayer may be in violation of Section 311-91 of this chapter.

- (e) If the tax commissioner provides written advice under this section, the opinion shall include a statement that:
  - (i) The tax consequences stated in the opinion may be subject to change for any of the reasons stated in subsection (c) of this section; and
  - (ii) It is the duty of the taxpayer to be aware of such changes.
- (f) The tax commissioner may refuse to offer an opinion on any request received under this section.
- (g) An opinion of the tax commissioner binds the tax commissioner only with respect to the taxpayer for whom the opinion was prepared and does not bind the tax administrator of any other municipal corporation.
- (h) The tax commissioner shall make available the text of all opinions issued under this section, except those opinions prepared for a taxpayer who has requested that the text of the opinion remain confidential. In no event shall the text of an opinion be made available until the tax commissioner has removed all information that identifies the taxpayer and any other parties involved in the activity or transaction.
- (i) An opinion of the tax commissioner issued under this section or a refusal to offer an opinion under subsection (f) of this section may not be appealed.

**Section 311-95. - Assessment; Appeal Based on Presumption of Delivery.**

- (a) (i) The tax commissioner shall serve an assessment either by personal service, by certified mail, or by a delivery service authorized under section 5703.056 of the Ohio Revised Code.
  - (ii) The tax commissioner may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail. Such alternative delivery method must be authorized by the person subject to the assessment.
  - (iii) Once service of the assessment has been made by the tax commissioner or the tax commissioner's designee, the person to whom the assessment is directed may protest the ruling of that assessment by filing an appeal with the local board of review within sixty (60) days after the receipt of service. The delivery of an assessment of the tax commissioner as prescribed in Section 718.18 of the Revised Code is prima facie evidence that delivery is complete and that the assessment is served.
- (b) (i) A person may challenge the presumption of delivery and service as set forth in Ohio Revised Code section 718.18.

- (ii) If a person elects to appeal an assessment on the basis described in subsection (b)(i) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty (60) days after the initial contact by the tax commissioner or other municipal official, or the designee of either, with the person. Nothing in this subsection prevents the tax commissioner or other official from entering into a compromise with the person if the person does not actually file such an appeal with the local board of review.

**Section 311-97. - Local Board of Review; Appeal.**

- (a) (i) A local board of review shall be maintained to hear appeals as provided in Ohio Revised Code Chapter 718.
- (ii) The local board of review shall consist of three (3) members. Two (2) members shall be appointed by city council and may not be employees, elected officials, or contractors with the Municipality at any time during their term or in the five (5) years immediately preceding the date of appointment. One member shall be appointed by the city manager. This member may be an employee of the Municipality, but may not be the director of finance or equivalent officer, or the tax commissioner or other similar official, or an employee directly involved in municipal tax matters, or any direct subordinate thereof.
- (iii) The term for members of the local board of review appointed by the city council shall be two (2) years. There is no limit on the number of terms that a member may serve should the member be reappointed by city council. The board member appointed by the city manager shall serve at the discretion of the city manager.
- (iv) Members of the board of tax review appointed by city council may be removed by city council as set forth in Section 718.11(A)(4) of the Revised Code.
- (v) A member of the board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.
- (vi) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the board shall impair the power and authority of the remaining members to exercise all the powers of the board.
- (vii) If a member is temporarily unable to serve on the board due to a conflict of interest, illness, absence, or similar reason, city council or the city manager, whichever appointed the member, shall appoint another individual to temporarily serve on the board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.
- (viii) No member of the board shall receive compensation, fee, or reimbursement of

expenses for service on the board.

- (ix) A member of the board shall not be appointed to or serve on another such municipal board simultaneously.
- (b) A majority of the members of the board of shall constitute a quorum. The board shall adopt its own written procedural rules and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code and shall be maintained in a secure location under the control of the tax commissioner. No member of the board may remove such documentation, copies of returns or reports, final determinations, or working papers from the hearing. Hearings requested by a taxpayer before the local board of review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code. Only parties to the case may be present during the hearing.
- (c) Whenever the tax commissioner issues an assessment, the tax commissioner shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed, and to whom the appeal should be directed.
- (d) Any person who has been issued an assessment may appeal the assessment to the local board of review by filing a request with the board. The request shall be in writing, shall state with particularity why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after the taxpayer receives the assessment.
- (e) The local board of review shall schedule a hearing to be held within sixty (60) days after receiving an appeal of an assessment under subsection (c) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and/or may be represented by an attorney at law, certified public accountant, or other representative as provided by law. The board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty (120) days after the first (1<sup>st</sup>) day of the hearing unless the parties agree otherwise.
- (f) The board may affirm, reverse, or modify the tax commissioner's assessment or any part of that assessment. The board shall issue a final decision on the appeal within ninety (90) days after the board's final hearing on the appeal, and send a copy of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the tax commissioner may appeal the board's decision as provided in section 5717.011 of the Ohio Revised Code.

#### **Section 311-99. – Civil Limitations Periods; Collection of Unpaid Taxes.**

- (a) All taxes imposed by this chapter shall be collectible, together with any interest and

penalties thereon, by a civil action at law. All additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later; or

(i) Within six (6) years in the case of any of the following:

- (1) A municipal income tax return that omits gross income in excess of twenty-five percent (25%) of that required to be reported;
- (2) Filing a false or fraudulent municipal income tax return with intent to evade the tax; or
- (3) Failure to file a municipal income tax return; or

(ii) For tax years beginning on or after January 1, 2016, within one (1) year after the conclusion of the qualifying deferral period, if any.

(b) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

(i) Beginning on the date a person who is aggrieved by an assessment files with the local board of review the request described in Section 311-97 of this chapter. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the local board of review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment; and

(ii) Ending the later of the sixtieth (60<sup>th</sup>) day after the date on which the final determination of the local board of review becomes final or, if any party appeals from the determination of the local board of review, the sixtieth (60<sup>th</sup>) day after the date on which the final determination of the local board of review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal is available or taken.

(c) In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the tax commissioner shall be extended one (1) year from the time of the final determination of the federal tax liability.

(d) The time limit described in subsection (a) of this section may be extended at any time if both the tax commissioner and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in subsection (e) of this section.

(e) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in Section 311-71 of this chapter.

(f) (i) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a

payment by the Municipality does not prejudice any claim for refund upon final determination of the appeal.

- (ii) If upon final determination of the appeal an error in the assessment is corrected by the tax commissioner, there shall be issued to the appellant or to the appellant's assigns or legal representative a refund in the amount of the overpayment as provided by Section 311-71 of this chapter, with interest on that amount as provided by subsection (d) of Section 311-71.
- (g) No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:
  - (i) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties; or
  - (ii) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

**Section 311-101. – Confidentiality.**

- (a) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by Chapter 718 of the Ohio Revised Code or by the charter or ordinance of the Municipality is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Municipality as authorized by Chapter 718 of the Ohio Revised Code or the charter or ordinance authorizing the levy. The tax commissioner or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the State Tax Commissioner, and tax administrators of other municipal corporations.
- (b) This section does not prohibit the Municipality from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.
- (c) In addition to the penalties provided by Section 311-999, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal, and any member of the local board of review who violates the provisions of this section shall be subject to removal from the local board of review.

**Section 311-103. - Adoption of Rules.**

- (a) Pursuant to Section 718.30 of the Revised Code, the Municipality, pursuant to this Chapter, grants authority to the tax commissioner, subject to the approval of the city manager, to adopt and promulgate rules and regulations authorized or required by this chapter relating to any matter or thing pertaining to the collection and payment of

taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

- (b) Not less than ten days before the approval by the city manager of any rule or regulation recommended for adoption and promulgation by the tax commissioner, a public hearing shall be held by the city manager or one designated by the city manager. Notice of the time and place of the public hearing and the text of the proposed rule or regulation shall be published in the Municipal Bulletin for two consecutive weeks within the thirty-day period immediately preceding the public hearing. The city manager, after having conducted or reviewed the substance of the public hearing, shall approve, disapprove or modify the proposed rule or regulation. The rule or regulation shall be promulgated by publication in the City Bulletin within thirty days after its approval by the city manager.
- (c) All rules adopted under this section shall be published and posted on the internet

#### **Section 311-105. - Collection After Termination of Chapter.**

- (a) This chapter shall continue in full force and effect insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue in full force and effect until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Section 311-99 and subsection (h) of Section 311-999.
- (b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Section 311-51 as though the same were continuing.

#### **Section 311-107. - Savings Clause.**

This chapter shall not apply to any person or to any property as to whom or which it is beyond the power of council to impose the tax herein provided for. If any sentence, clause, section, or part of this chapter, or any tax against or exception granted any person or form of income specified herein is found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council of the City of Cincinnati that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included therein.

This chapter 311, as ordained by Ordinance \_\_-2015 adopted by City Council on December \_\_, 2015, and as applied to tax years beginning prior to January 1, 2016, is intended to and shall be construed as including, for the information and convenience of taxpayers and tax professionals, a restatement of the provisions of Chapter 311 in effect

prior to the adoption of Ordinance \_\_-2015. As to such tax years beginning prior to January 1, 2016, to the extent any conflict exists between Chapter 311, as ordained by Ordinance \_\_-2015, and the preceding version of Chapter 311 in effect during the tax year in question, the provisions of Chapter 311 as it existed in the tax year in question shall control.

#### **Section 311-109. - Public Hearings on Modifications to This Chapter.**

Not less than seven (7) days before the adoption by the city council of any ordinance adopting, amending or repealing any provision of this chapter, a public hearing shall be held by the council or a committee of the council designated by the council. Notice of the time and place of the public hearing and the text of the proposed modification to this chapter shall be published in the City Bulletin for two (2) consecutive weeks within the thirty-day period immediately preceding the public hearing. The council, after having conducted or reviewed the substance of the public hearing, may adopt, amend or repeal any provision of this chapter.

In the event that any provision of this chapter is modified by operation of law or is declared to be unconstitutional, the modification of the provisions of this chapter to conform to the requirements of law or judicial decision shall not be subject to the public hearing requirement set forth in this section.

#### **Section 311-999. - Violations; Criminal Penalties.**

- (a) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the first (1<sup>st</sup>) degree on a first (1<sup>st</sup>) offense and may be assessed such penalties, including fines and/or imprisonment, as the same are set forth in sections 2929.21 and 2929.31 of the Ohio Revised Code, whichever may be applicable. By way of illustration and not limitation, no person shall:
- (1) Fail, neglect or refuse to make any return or declaration required by this chapter; or
  - (2) Knowingly make an incomplete, false or fraudulent return; or
  - (3) Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
  - (4) Fail, neglect or refuse to withhold or remit municipal income tax from such person's employees; or
  - (5) Refuse to permit the tax commissioner or any duly authorized agent or employee to examine the books, records, papers and federal and state income tax returns of such person or such person's employer, or any documentation relating to the income or net profits of a taxpayer; or



- (6) Fail to appear before the tax commissioner and to produce the books, records, papers or federal and state income tax returns of such person or person's employer, or any documentation relating to the income or net profits of a taxpayer, upon order or subpoena of the tax commissioner; or
  - (7) Refuse to disclose to the tax commissioner any information with respect to the income or net profits of such person or, in the case of a person responsible for maintaining information relating to his or her employers' income or net profits, such person's employer; or
  - (8) Fail to comply with the provisions of this chapter or any order or subpoena of the tax commissioner; or
  - (9) To avoid imposition or collection of municipal income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof; or
  - (10) Fail, as an employer, agent of an employer, or other payer, to maintain proper records of employees residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the tax commissioner false information; or
  - (11) Willfully fail, neglect, or refuse to make any payment on the estimated tax for any year or part of any tax year; or
  - (12) Fail, as president or treasurer of a corporation, to cause the tax withheld from the qualifying wages of the employees of such corporation pursuant to this chapter to be paid to the Municipality in accordance with the provisions of Section 311-23; or
  - (13) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.
- (b) Any person who discloses information received from the Internal Revenue Service in violation of Internal Revenue Code Sec. 7213(a), 7213A, or 7431 shall be guilty of a felony of the fifth (5<sup>th</sup>) degree and shall be subject to a fine of not more than five thousand dollars (\$5,000) plus the costs of prosecution, or imprisonment for a term not exceeding five (5) years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.
- (d) Each instance of access or disclosure in violation of division (a) of Section 311-101 of this chapter constitutes a separate offense.
- (e) For purposes of this section, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.

- (f) For purposes of this section, the term “person” shall, in addition to the meaning prescribed in Section 311-9-P3 of this chapter, include in the case of an association, pass-through entity, corporation or unincorporated business entity not having any resident owner or officer within the Municipality, any employee or agent of such association, pass-through entity, corporation or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the municipal income tax as required by this chapter.
- (g) The failure of any employer, taxpayer or person to receive or procure a municipal income tax return, declaration or other required form shall not excuse such person from making any information return, return or declaration, from filing such form, or from paying the municipal income tax.
- (h) Prosecutions for an offense made punishable under this section or any other provision of this chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of 25 percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after commission of the offense.
- (i) Pursuant to Sections 801-5, 801-11 and 801-25 of the Cincinnati Municipal Code, the issuing authority of any license or permit may deny issuance of any original license or permit, prohibit subsequent assignment of any license, or revoke any existing license or permit for failure to comply with the provisions of this chapter.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, take effect and be in force on and after January 1, 2016. The reason for the emergency is the immediate need to ensure that the City has a municipal income tax code that complies with recent amendments to Ohio Revised Code Chapter 718 in effect on January 1, 2016 in order to continue generating tax revenue for tax years 2016 and thereafter.